The Adyar Library Series—No. 27

RĀJADHARMA

Printed by
C. SUBBARAYUDU,
AT THE VASANTA PRESS,
ADYAR, MADRAS

RĀJADHARMA

(Dewan Bahadur K. Krishnaswami Row Lectures, University of Madras)

BY

K. V. RANGASWAMI AIYANGAR

Honorary Professor of Economics, Benares Hindu University

THE ADYAR LIBRARY, ADYAR

1941

TO

DHARMĀTMĀ

PANDIT MADAN MOHAN MALAVIYAJI

IN VENERATION AND AFFECTION

pursued by Professor Rangaswami Aiyangar in the scanty leisure of a busy official life.

By a fortunate circumstance, he selected as the theme of his lectures in the Dewan Bahadur K. Krishnaswami Row Foundation of the University of Madras some important aspects of *Dharmaśāstra*. To these lectures, which were delivered in 1937, he gave the title of *Rājadharma*. The title might suggest one more study of ancient Indian polity, a subject which has had a great vogue in Indian and Foreign universities since the publication of the *Arthaśāstra* of Kauṭilya in 1909. In reality it is a prolegomena to *Dharmaśāstra* in which, among other matters, the inter-relations and canonical validity of both *Arthaśāstra* and *Dharmaśāstra* are explained and elucidated. In the early British Indian judicial administration the study of *Dharmaśāstra* had an attraction to lawyers and orientalists, which has steadily waned with the growth of Indian case-law and its supersession of *smṛti* law. Its popularity has now gone to *Arthaśāstra*. The two are now usually regarded as rivals and not as complementing each other. Academic criticism professes to see in them differences of aim, outlook, method and origin. It is significant, as pointed out in one of his 'Notes' by Professor Rangaswami Aiyangar, that even living repositories of traditional Sanskrit scholarship silently acquiesce in the view that *Arthaśāstra* is a body of secular knowledge, and on that hypothesis deduce a conclusion of its inferior authority as compared with *Dharmaśāstra*.

Such a view is one of many instances of the obscuration, even to paṇḍits of our day, of correct positions in regard to those two śāstras. Scholars whose approach to these has been in a spirit of contempt for traditional methods of study, and who, in violation of the *spirit* of the historic method, which they profess to follow, omit to take note of the mental and spiritual background of Hindu social thought, carry the process of obscuration further. We encounter accordingly in modern studies of ancient Hindu society a mass of doctrine for which scientific validity is claimed and conceded on grounds which a more balanced study might challenge.

A familiar instance of the trend is to be seen in the usual acceptance of *Rājadharma* as state-craft in the narrow sense in which it *seems* conceived by writers like Kāmandaka. The traditional conception of the term equated it with the whole *corpus* of Dharma. In the epic, when in answer to an interlocutor, a sage begins to expound *Rājadharma*, he deals not with constitutional and political matters alone but with the whole of Dharma. Seen in this perspective many conclusions which are now readily accepted in regard to our social thought will need revision. Professor Rangaswami Aiyangar has deliberately chosen the challenging title to draw attention to the patent harm done by omitting to recognise this traditional view. He illustrated the point by citing many instances when he delivered the lectures now published. These have now been amplified and expanded so as to

furnish to the reader adequate material for judging of the validity of the positions taken by the lecturer, and are embodied in a series of very condensed essays or articles, amounting to more than a hundred-and-eighty, which are modestly designated as 'Notes.' Even a cursory perusal of their titles in the list of contents will disclose their importance as well as their range, variety and interest. The 'Notes' form as important a part of the book as the text. Attention may be drawn also to the classified index, which may be useful to students. It is the work of a member of our staff, Mr. A. N. Krishna Aiyangar, M.A., L.T., Joint Editor of our *Bulletin*.

The scheme of publication which the Adyar Library has laid down provides for the publication of lectures like those now introduced. Our obligation to Professor Rangaswami Aiyangar, who has so freely been collaborating with us, is all the greater since he has given the Adyar Library all rights both in the lectures on *Rājadharma* now published and in other works which he is editing for the Library. To meet the convenience of readers of Sanskrit unfamiliar with Nāgarī script, he has given at considerable labour the many Sanskrit texts he has cited in the 'Notes' in Roman. It is hoped that this will enable a larger body of readers to examine the citations than would be possible if Nāgarī had been employed for their presentation.

The Adyar Library G. SRINIVASA MURTI,
1st July, 1941 *Honorary Director*

PREFACE

IN the renaissance of Indian studies, which is a feature of our day, a branch which has not come to its own is *Dharmas'āstra*. Even among its special students divergent views as to its character, scope, content, source, authority and affiliations are not uncommon. This is due neither to lack of material nor to lack of intensive study. Though only a small fraction of the vast literature of *Dharmas'āstra* has been printed and a still smaller fraction is available in translations, virtually all the great commentaries and digests that have survived eight centuries of alien and frequently hostile rule, are now available in one or other of our great manuscript collections.

Dharmas'āstra was a living subject down to the threshold of the nineteenth century. It was assiduously cultivated at the great centres of Hindu learning and digests were written as late as the accession of Queen Victoria. For a generation or two afterwards, proximate utility drew lawyers and judges to the intensive study of one section of it, *viz. vyavahāra*. A mild interest has since then been evinced by students of ritual in the other two sections, *viz.*, *ācāra* and *prāyascitta*.

Legalist enthusiasm for *Dharmaśāstra* rapidly waned with the growth of case-law and the ever-widening rift between the traditional Hindu law and the judge-made law of the British Indian courts. If and when the proposal under consideration to codify Hindu Law (on the basis obviously of judicial decisions and reformist advocacy) becomes *fait accompli*, the little interest which survives among professional men will vanish completely.

The contingency need not, however, cause misgiving. *Vyavahāra* doctrines have suffered greatly from specious reasoning and distortion in the interest of litigants and from their pursuit in the twilight of half-knowledge. If *Dharmaśāstra* continues to hold an attraction, it will be chiefly to students of history, who will turn to it for the light it will throw on the institutions and ideals, the life and thought of an age remote from their own. It will also count as a disciplinary study in the Universities. Its liability to distortion will not disappear altogether. To read the present into the past is a foible to which historians are liable. The political use of history consists in the past forming an arsenal from which weapons for present strife may be drawn. History is not immune from interested falsification or from erroneous conclusions due to religious or political bias. These risks will have to be faced by *Dharmaśāstra* also. But, as in the case of history, the margin of error can be reduced by the diffusion of high ideals of truth and accuracy and, as in the physical sciences which use laboratory methods

of investigation, by the provision of safeguards or 'controls.'

An aim of the lectures now printed was to evoke and stimulate interest in a branch of study which was regarded for ages as of paramount importance for the upkeep of the social order. Other aims were to illustrate its use to the student of Indian history and sociology, to define its position among kindred studies, and to vindicate the value of the traditional method of approach to it, the neglect of which has been the fertile source of numerous dubious conclusions now in circulation. An attempt was also made to demonstrate by examples the importance of securing, as a condition precedent to its study, a correct perception of the philosophic background of Hindu life and thought. Sir Henry Maine, whose masterly studies of Roman and Celtic law, vindicated the value of the historic method, made many plausible and invalid generalisations when he dealt with Hindu jurisprudence. His errors sprang not from any defect of the historic method but from his conspicuous drift from that method in the case of Hindu Law, when he read into its authors motives and purposes as well as beliefs of his day, and showed inability to avoid bias due to a sense of racial and religious superiority. It is natural but regrettable that the authority justly attaching to his name is still securing the currency of many erratic views for which justification will be difficult to find. It is still more a matter for regret that with far less excuse than Maine, who wrote from a cursory perusal of English translations of

a few *smṛtis* and digests and without access in the originals to the major digests, commentaries and *smṛtis*, modern writers, who enjoy these advantages, repeat or add to Maine's erroneous statements. Few modern books on Hindu ethics, for instance, are free, whether composed in a spirit of apology or appreciation or of hostile criticism, from statements which wider knowledge of *Dharmaśāstra* and its study, not apart from but side by side with cognate subjects, might have prevented. In the Hindu view of life, aims, ideals and activities were not divided up and considered as independent of one another. There was no distinction between things secular and things religious: the distinction would have been unintelligible to the ancient Hindu. Society was viewed as indivisible, except for distribution of duties and obligations. On the equipoise of duties duly discharged, whether of individuals, classes or functionaries, was held to depend the harmony not only of a particular state or community but of the entire universe. Life was a *continuum*, not interrupted by death, and so were deed and thought. With such beliefs, to look into only *one* specialised subject like *Arthaśāstra* or *Dharmaśāstra*, for a *final* interpretation of the meaning of any rule of life or institution, was to ask to be misled. This is why error pursues the heels of one who would study a section of *Dharmaśāstra* (*e.g.*, *vyavahāra*) to the exclusion of the others, or study *Dharmaśāstra* and *Arthaśāstra* apart and as if they were not cognate and interdependant. Specialisation has its limitations. We

might acquire knowledge of the histology and anatomy of Hindu society, and miss all knowledge of its physiology and psychology.

In earlier studies, some of which go back to 1914, it was my endeavour to indicate some of the devices which the traditional method of education and transmission of knowledge from generation to generation in the "bookless ages," provided for a correct comprehension of the Hindu ideals of life. The present lectures illustrate the uses of the traditional approach to the study of *Dharmas'āstra* and *Arthas'āstra*, and the unwisdom of ignoring or rejecting, in the special conditions in which Indian learning was conserved, valuable oral tradition and its late record in books.

The designation of lectures on *some* aspects of *Dharmas'āstra* as *Rājadharma* requires in the conditions of our day an explanation which would have been superfluous to the old Hindu. Today we, under the obsessions of political studies, regard *Rājadharma* as king-craft or polity. This meaning was not unknown in the past but the wider sense of the term was in general use. The distinction involves what may be regarded as a "constitutional" issue. Among personal and functional obligations those which lay upon the head of society (*e.g.* Rājā) hinged round his duty to maintain each person in his duty or Dharma. The king's Dharma, *Rājadharma*, was thus the sum of the knowledge of all particular duties, *i.e.* the whole Dharma, *Dharmas'āstra*. The new knowledge springing from the *Arthas'āstra* has been used to support views

which reverse the relations of the ancient Hindu king and his society. The wider sense of the term would have automatically corrected the tendency were it understood. The idea was so familiar to the old-time Hindu that it entered into the fabric of ordinary literature. For instance, addressing Rāma, Lakṣmaṇa is made by Bhavabhūti to say:

" *Dharmaprakṛṣyamāṇo vā goptā Dharmasya vā bhavañ* "

(*Mahāvīracarita*, V, śl. 30)

The king is the subject as well as the protector of *Dharma*.

The form of a lecture precludes the inclusion of citations of authority. The lectures now printed contain on every page statements which run counter to received opinion. During oral delivery such explanations as seemed from the nature of the audience to be called for were given on the spot. When the lectures are printed and addressed to a wider circle, it has become necessary to supply the material on which readers might judge for themselves of the validity of the reasoning or conclusions advanced in the lectures, instead of accepting them without examination. The need is met by the addition of the "Notes" at the end of the lectures (pp. 66-216). I have endeavoured to keep down their number and to condense them as far as possible consistently with clearness. In several 'Notes' the argument has been developed and carried a stage further than in the text. For understanding the points of view of the lectures the 'Notes' are very necessary. It is hoped

that they will prove of interest and of some use to students of *Dharmaśāstra.*

The lectures were composed for oral delivery early in 1938. The University of Madras had no funds for their publication. I am indebted to the authorities of the Adyar Library and particularly to its erudite Director, *Vaidyaratna*, Captain G. Srinivasamurti for not only taking over the publication first through the *Bulletin* of the Library and then independently, but for the freedom given me in regard to the number and length of the 'Notes.' I am also indebted to the Joint Editor of the *Brahmavidyā*, Mr. A. N. Krishna Aiyangar, M.A., L. T., for seeing the book through the press and for providing an index of unusual fulness and clarity. My obligation is great to Mr. C. Subbarayudu, the Manager of the Vasanta Press, for his patience in overlooking the submission of numerous proofs, necessitated by the use, for the convenience of readers in Europe and America, of diacritically marked Roman type for passages in Sanskrit, and for the care with which the work has been done.

The printing of the book was begun in May 1939. As both Mr. Krishna Aiyangar and I became soon after engrossed in the task of organising an Oriental Institute at Tirupati and continued in the work till September 1940, a long interval between the commencement and the completion of the printing has become unavoidable.

Vasumativilās,
Rangachari Road,
Mylapore, 5th July, 1941

K. V. RANGASWAMI

CONTENTS

PAGE

DEDICATION v
PREFATORY NOTE vii
PREFACE . . . . xi.
LECTURE I 1
LECTURE II 33

NOTES:

1. Study of Ancient Indian Culture . . . 67
2. Rājadharma 67
3. The Lecturer's Works 68
4. Use of the Kauṭilīya in Modern Politics . . 68
5. Dharmaśāstra as Priestly Twaddle . . . 68
6. Small Content of Law and Polity in Dharmaśāstra 70
7. Halhed's Code 71
8. Colebrooke's Digest 71
9. Early English Translations of Dharmaśāstra and Works on Hindu Law 72
10. Jimūtavāhana's Interest in Non-Vyavahāra . . 73
11. Mādhavācārya's *Kālaviveka* or *Kālanirṇaya* . . 73
12. Mixture of Spiritual and Secular Punishments in the Hindu Criminal Code 74
13. Brāhmaṇa Immunities 75
14. Alleged Secular Nature of Arthaśāstra . . 76

PAGE

15. Toleration of Heresy and Heterodoxy . . . 77
16. Differentiation between Secular and Religious Law 78
17. Divinity of Punishment or Daṇḍa . . . 80
18. Vedic Basis of Hindu Law 80
19. Doctrine of Option (*Vikalpa*) 81
20. Conflicts of Law not Real 82
21. Schools of Arthas'āstra 83
22. Application of Mimāmsa to Dharmas'āstra and Arthas'āstra 84
23. Arthas'āstra core of *Smṛtis* 84
24. Brahmanical Reaction from the First Century A.D. favours Dharmas'āstra 84
25. Kāmandaka's *Nītisāra* 85
26. Sūtra form of Composition 86
27. Formal Public Recitations of Sūtras . . . 86
28. Lost *Smṛti*-bhāṣyas 86
29. Distance of time between *Smṛtis* and Commentaries 87
30. Kauṭilya's own *Bhāṣya* on the *Arthas'āstra* . . 87
31. Mādhava's Treatment of Vyavahāra and Rājadharma 87
32. Recent Bhāṣyas and Nibhandhas . . . 88
33. Non-inclusion of *Yājñavalkyasmṛti* in "The Sacred books of the East" . . . 88
34. Attitude of Indian Courts to Dharmas'āstra . . 89
35. Colebrooke's Study of Mīmāmsa . . . 89
36. Allegation of Priestly influence on Hindu Law . 90
37. S'abara's Modernity in Criticism . . . 90
38. Kauṭilya and his Guru 91
39. Criticised views on the nature of Dharmas'āstra . 91
40. Jayaswal's views of the Difference between Arthas'āstra, Dharmas'āstra and Rājaniti . . 92
41. The way of the Māhājana the path of Dharma . 93

PAGE

42. Connotation of Dharma 93
43. Classifications of Dharma 94
44. *Dharma* comprehends all knowledge . . . 94
45. The Vidyāsthānas or Dharmasthānas . . . 95
46. The *Kṛtya-Kalapataru* 95
47. Omission of Rājadharma and Vyavahāra in Digests 96
48. Sections omitted in the *Ratnākara* by Caṇḍes'vara 96
49. The Hypotheses of Mīmāmsa 96
50. Consideration of apparent conflicts of Authorities 96
51. Alleged rule of *Kālikā-Purāṇa* on the adoption of a boy who has had Samskāras . . . 98
52. Judges and Assessors to be trained lawyers . . 98
53. Pariṣad 99
54. Vastness of Dharmas'āstra Literature . . . 100
55. Dharmas'āstra activity in the middle of Civil Troubles 101
56. Idea of union of interest between King and Subject 101
57. King and Daṇḍa divinely created . . . 102
58. Horror of Anarchy 102
59. Influence of good Government on the Seasons . . 102
60. Rājā Kālasya Kāraṇam 102
61. Rāmarājya 105
62. Kārta-vīryārjuna 105
63. Rāma as the Restorer of the Golden Age in Tretā-Yuga 106
64. Expulsion or execution of an evil Ruler . . 106
65. Taxes are the King's Wages 107
66. King's freedom ends with Coronation . . . 107
67. Viṣṇu resides in Subject as in King . . . 108
68. The King's duty to know Dharma . . . 108
69. Unhappiness is due to error in Government . . 108

PAGE

70. Adjustment of Dharma to capacity . . . 109
71. Adjustment of law to changing society . . . 109
72. Absence of the influence of legal fictions in Hindu Dharma 110
73. Conservatism not characteristic of earlier, and liberal views of later Smārtas 111
74. Schools of Dharmas'āstra 112
75. Kauṭilya and Manu on the authority of Nyāya . 113
76. Customary law systematised, recorded and applied . 114
77. Recommendation of faith in God in preference to sacrifices, etc. 115
78. Gifts (*Dāna*) preferred 115
79. Authoritativeness of a Smṛti due to its own merit . 116
80. Smṛtis endless; Recognition of a modern smṛti (Medhātithi) . . . . , . 116
81. The Doctrine of Representation (*Pratinidhitvam*) . 118
82. Condemnation of S'ūdra mendicancy and celibacy . 122
83. Magnification of the Brāhmaṇa . . . 122
84. Performance of As'vameda by Kings of dubious caste . 122
85. Samudragupta's relation to an outcaste clan . . 123
86. Heliodorus the Vaiṣṇava Greek . . . 124
87. The Huns as worshippers of Viṣṇu . . . 124
88. The effects of the spread of Mīmāmsa on Buddhism . 125
89. S'aṅkara's influence in the Disappearance of Buddhism 127
90. Devala's claim to supersede other smṛtis . . 128
91. Digests under Royal authorship or patronage . . 129
92. Dharmas'āstra in the Musalman period . . . 129
93. *Dvaita-nirṇaya* 130
94. The substitutes for the *Pariṣad* in Dharma-vyavasthā 131
95. Medhātithi's repudiation of the King's power to make a law in transgression of Dharma . . . 131
96. King's alleged power to make laws, of his own authority 132
97. Power of the King to change law or usage. The alleged case of As'oka 135

PAGE

98. Alleged change by the Mauryas in the law of theft . 135
99. Respite from sentence for three days in the case of prisoners sentenced to death 136
100. Royal pardon 137
101. Prohibition of Vedic sacrifices 138
102. Brūṇahatyā 139
103. As'oka's *Dhamma* viewed as Brahmanical . . 139
104. Dharmavijaya 140
105. Dharma-Amātya same as Dharmādhikārī . . 143
106. Title of Dharma Mahā-Rāja in the Pallava Dynasties . 143
107. Kadamba title of Dharma-Mahārāja . . . 144
108. Gaṅgas as Dharma-Mahārājas 145
109. Title of Dharma-Mahārāja in Campā . . . 145
110. Coḷa claim to follow Manu's lead . . . 145
111. Kālidāsa on Manu's ideal 146
112. Evils of Anarchy (*Arājatā*) 146
113. Aspects of Barbarian rule in India . . . 147
114. Removing the taint of Kali (*Kali-rajaḥ*) . . 148
115. Education of Princes 148
116. Increasing Dependence on Customary Law . . 148
117. Equal validity of all texts 150
118. Anonymous texts 152
119. Justice and good conscience 152
120. Insight or Intuition (*Yukti*) 153
121. Acceptance of the usages of Pratiloma castes . . 154
122. The usages of the good S'ūdra 155
123. Supersession of S'iṣṭācāra by Sādhūnam-Ācāra . 156
124. Animus against the learned S'ūdra . . . 158
125. Limits of Āryāvarta 159
126. Āpad-Dharma 161
127. Voyages and visits to prohibited Areas . . 162
128. Relaxations of Yuga-Dharma 163
129. Relaxation of duties for S'ūdras and women . . 164
130. Upanayana for Women 165

PAGE

131. Reduction of stringency of rules of Taint . . 166
132. Relaxation of rule for Age, Infirmity etc. . . 167
133. Struggles of Bhakti-Mārga Adherents with Smārtas . 168
134. Emancipation of individual earnings from family control and joint-ownership 168
135. Reduction in the number of valid marriages . . 169
136. Adoption 170
137. Status of Women (General) 171
138. Workhouses for destitute women . . . 171
139. Wife shares in Husband's Puṇya . . . 171
140. Bṛhaspati on the rights of the Wife . . . 172
141. Right of unmarried daughter to expenses of marriage . 173
142. Marriage an obligation to woman . . . 174
143. Alleged Buddhist influences in securing Sex equality . 175
144. Indissolubility of marriage 175
145. Condemnation of prolonged celibacy . . . 176
146. Praise of Gṛhasthās'rama 178
147. The widow's power of Alienation . . . 178
148. Divorce open to Non-Brāhmaṇas . . . 180
149. *Kalivarjya* 181
150. Candragupta's marriage to his brother's widow . 183
151. Gradual disappearance of *Niyoga* . . . 184
152. Prohibition of hypergamous unions . . . 185
153. Growth of belief in magical practices . . . 185
154. Sati or Sahamaraṇa or Anvārohaṇa . . . 186
155. Treatment of unchaste and abducted or outraged women 189
156. Rehabilitation of abducted or outraged women . . 192
157. Al-Biruni on Hindu treatment of fallen women and returned converts 193
158. Rehabilitation of the converted Hindu . . . 194
159. Treatment of Vrātya; S'ivāji's expiation and coronation 195
160. Vrātyastoma 196
161. As'vamedha by Kings of dubious Kṣatriya lineage . 197

PAGE

162. Nibandhas on Dharmas'āstra by Kings . . . 199
163. Hemādri's *Caturvargacintāmaṇi* . . . 199
164. *Jayasimhakalpadruma* 199
165. Small content of politics and law in Nibandhas written by command 200
166. The character of Rājanīti in Nibandha literature . 200
167. Kauṭilya's *Arthas'āstra* 201
168. Bhoja's *Yuktikalpataru* 201
169. *Mānasollāsa* of Somes'vara Cālukya . . . 201
170. Kāmandaka, Somadeva-Sūri and Hemacandra . . 202
171. Rājadharma works by Court Paṇḍits . . . 202
172. Lakṣmīdhara and the *Kṛtyakalpataru* . . . 203
173. Caṇḍes'vara 204
174. *Nītimayūkha* 204
175. Non-Kṣatriya coronation 205
176. Killing a Brāhman in self-defence . . . 205
177. *Kūṭa-Yuddha* 208
178. Anantadeva's doctrines 208
179. Mitramis'ra's views 208
180. Caṇḍesvara and Lakṣmīdara 210
181. King's propitiation of Unseen Powers . . 211
182. Caste of Caṇḍesvara's master—the Brāhmaṇa as King 211
183. Recognition of the King *de facto* . . . 213
184. The State's obligations to the Poor . . . 213
185. Burke's definition of Society 213
186. Divinity of the People (*Prajāḥ*) . . . 214
187. Composition of the *Rājanīti-ratnākara* by Royal command 215
188. Principle of substitution (*Pratinīdhitvam*) . . 215
189. A woman's independent right to perform a sacrifice 216

ERRATA

Page	Line				
69	4	*Read*	contempt	*for*	comtempt
104	33	,,	initiated by the	,,	initiated the
107	19	,,	*Catus'satītīkā*	,,	*Catus'satīkākā*
113	13	,,	*Nyāyastatra*	,,	Nyayāstatra
152	16	,,	But	,,	Bur
163	25	,,	S'loka Āpastamba	,,	S'loka Āpatamba
165	10	,,	*Sadyovadhūḥ*	,,	*Sadhyovadhūḥ*
	14	,,	*Upanayana*	,,	*Upananayana*
174	16	,,	Taittirīya	,,	Taittrīya
196	9	,,	Ghosh	,,	Ghose
200	31	,,	Lakṣmīdhara	,,	Lakṣmīdharma

RĀJADHARMA

(DEWAN BAHADUR K. KRISHNASWAMI ROW LECTURES)[1]

I

A FEW months ago I received an invitation from the Syndicate of the University of Madras inviting me to give the initial lectures on a foundation bearing the name of the late Dewan Bahadur K. Krishnaswami Row. The lectures were to be based on personal investigations, and to bear on ancient Indian culture. My hands were then quite full with work. The distance between Kāśī and Madras, and the difficulty of getting away from the University, in which it is now my privilege to serve, in a period full of work, tended to add to my reluctance. But it was overcome on three considerations. The desire of one's *alma mater* is, in the Hindu sense, *alanghanīya*—not to be set aside; the gentleman, whose name was borne by the lectureship was one for whom I had come to entertain affection and veneration; and the foundation seemed to be the first in the University, *definitely* marked for the advancement of a knowledge of ancient Indian culture, a subject which had yet to come to its own in Indian Universities. At present there is only one university in India—that at Benares—in which it is possible for a student to take a degree after a *full* course in this important branch. When teaching and

[1] Delivered on the 4th and 5th March, 1938.

research were accepted some years ago as *primary* obligations by the transformed provincial universities of India, a provision was made for the study of Indian history and archæology in a few of them. In Madras, where even the retention of the study of the history of the mother-country as *one* of several subjects forming an *optional* group, in the degree course, was secured only after long struggles, the first chair to be instituted was that of Indian History and Archæology, now limited by a convention to South India. Valuable additions have been made by instructors and research pupils to many branches of Indian history, political and cultural. But they have been due to the wide extension given by teachers to the scope of their duties. For instance, some recent additions to the literature of Indian polity and social structure have been made in the University of Bombay in the School of Sociology. With the exception of my colleague in Benares[1] who presides with distinction over our department of Ancient Indian History and Culture, only one other university professor in India—the Carmichæl Professor in Calcutta University—derives his designation from this branch. But, in Calcutta there is no provision for the group in the ordinary and honours courses leading to the B.A. degree, though it can be offered by a candidate for the M.A. degree. In the University of Bombay a candidate can indeed offer it in the M.A. examination, but the provision is infructuous as neither the University nor the constituent Colleges offer any help to students in securing the antecedent knowledge, or provide post-graduate teaching in it. In the Benares Hindu University alone has the vision of its founders and supporters made, from its beginning, provision in all the degree courses for the teaching of ancient Indian history including the history of Indian

[1] Dr. A. S. Altekar, M.A., LL.B., D.Litt.

literature, art, religion, and social and political institutions. The involuntary self-denial of so many Universities of India in this respect has not contributed to a correct perception of many present-day problems, which like most questions of the day, have their roots in the past. It is the feeling that it would not be right to refuse co-operation in any effort to revive the study of this important branch of study that has been the most powerful force impelling me to accept the invitation, in response to which it is my privilege to address today an audience in my old University. I trust that it will not be regarded as presumptuous, or as an abuse of hospitality, if I venture to express the hope that in the many admirable developments which are now taking place in a University, which can claim to be the mother of four other universities, provision will be made, hereafter atleast, for the adequate and continuous study of Indian culture in every stage of the courses of study leading to the M. A. degree.

It is now some years since Mr. Krishnaswami Row passed away.[1] His work was done in fields which do not come much into public view. His career was remarkable. Born in 1845, he turned to the study of English after a course of vernacular education, and passed the Matriculation examination in 1864 from the Presidency College. He had not the advantage of College education. But, when he had attained eminence, he was nominated a member of the University Senate and held the position for many years. He began his long official career as a clerk in the district court of an out-station. Without academic training in law, he rose to the position of a subordinate judge in Madras and of the chief judge in Travancore, and won a name as a very sound lawyer

[1] February, 1923.

and judge. After holding the highest judicial office in Travancore for over fifteen years, he was placed at the head of its administration by the Maharaja, a shrewd judge of men, devoted to the interests of his subjects. He held the office of Dewan with distinction for over the full term of five years. After his retirement in 1904, and till almost the last day of his life he took part in the chief public movements of the province. He was thorough in whatever he did. The reputation for efficiency, acuteness, balance and integrity, which he made even when he stood on the lower rungs of the official ladder, he kept through out a long life. He was firmly rooted in a belief in the verities of his ancestral religion and *dharma*, and was inflexible in his adherence to them. To know him was to respect him. The commemoration of his name in a University, in which as a student he stood outside the portals, is a fitting recognition of a life devoted to culture and service. It is an honour to be brought into association with anything which bears his name.

"Indian culture," even when limited by the adjective "ancient," is a term of Atlantean extension. The wealth of themes in so wide a range is an embarrassment to one who has to make an initial choice, and perhaps to start a tradition. The selection of "*Rājadharma*," in the wide sense in which it is accepted in Indian tradition, is due, among other considerations to the desire to round off a series of studies, which were begun by me thirty years ago, and which have been pursued in moments of leisure snatched from daily avocation. In 1914 when I was honoured with an invitation like the present, to give the inaugural lecture on the foundation named after Dr. S. Subrahmanya Aiyar, the most venerated Indian of the day in our province, I gave the first fruits

of studies of ancient Indian polity. The attempt partook the character of a pioneer enterprise, as the *locus classicus* for all study of Indian polity, namely the *Arthaśāstra* of Kauṭilya had been published only five years previously in spite of its existence having been suspected very much earlier by Weber and Aufrecht. I next turned to ancient Indian economic theory and practice and gave the results of my study of them in ordinary lectures delivered before the University, and later on under the Maṇīndra Foundation in the Benares Hindu University. When my official harness was shed in 1934, an invitation from the University of Calcutta to be a Special Reader enabled me to follow up the implications of our wide literature of *Arthaśāstra* and *Dharmaśāstra* on the social and schematic side. It is my purpose today to submit some reflections on the character, scope, progress and content of the Indian literature of *Dharma* as a prolegomenon to the study of an important branch of literature, which has influenced for centuries the life of the people of India, and whose force is still not spent. Many of the opinions to which expression is now given have been formed in the course of an examination of cardinal works in this branch which I am editing. It might be useful if it is made clear at the very beginning, that the aim of the lectures is not to attempt another resume of Indian political theory. The subject is worked out and there is little that one can hope to add to the data already collected. A stray interpretation, that may be new, will not justify a mere summary of accessible information. The source literature of ancient Indian polity is not large, judged by what has survived. Kauṭilya's book towers over the rest like a Himalayan peak. The works of Kāmandaka, Somadeva, Hemacandra, Bhoja and Someśvara, along with the dubious

works bearing famous 'epic' names like those of the opposed sages Bṛhaspati and S'ukra, and Vais'ampāyana, virtually exhaust the number. Every inch of this small field has been subjected to the investigator's spade. He who aspires hereafter to add to our knowledge must discover another *Kauṭilīya*. The prospect is not hopeful.

The subject has, however, attained remarkable popularity. The feeling which the *Arthas'āstra* created at first was a mixture of admiration and consternation. A tendency arose to view the old pun in the name 'Kauṭilya,' as fitly describing the author of unethical and tortuous policies. More thorough study of the *Arthas'āstra* in relation to its environment changed the earlier view. Kauṭilya's memory was then not only vindicated; he had a narrow escape from political canonisation. He has been gravely cited in legislative bodies, state papers and discussions of public policy, and his authority has been invoked—not always in defence of "emergency finance" or the necessity of espionage. The *Arthas'āstra* has been translated into several languages and is not regarded as needing to be bowdlerised before it can be prescribed for academic study. The exhumation of the old unsavoury reputation is now barred. It is *res judicata*. The innocuous "Kauṭalya" is now welcomed as the correct form of his name, and it has replaced the suggestive "Kauṭilya". The *Arthas'āstra* has the merit of being self-contained, and of exhibiting the working of a master-mind, like Aristotle's. To the statesman and administrator, it holds a different attraction. Its opinions have entered into the fibre of Indian political thought and life. The statesman, like the physician, believes in inherited tolerance to certain remedies, and selects only those which the system will not reject. Institutions and ideas are more readily

accepted and assimilated when they fit in with inherited aptitude and tradition than otherwise. The doctrine of the unity and continuity of history gains from the belief that the past survives in the present, like the immortal protoplasm. It offers a fresh inducement to the study of institutional and cultural origins. Reformers, who have to contend against mass inertia or opposition, are strengthened by the discovery of an ancient ancestry for their ideas. Though the sources of ancient Indian polity have been worked threadbare, they will continue to attract men of affairs so long as there is belief in their utility.

This might please those who take a pride in national literature, but the satisfaction will not be un-alloyed. For a proper comprehension of our ancient life and thought not only *Arthaśāstra* but the bigger literature of *Dharmaśāstra* is needed. The former has been examined pretty thoroughly. The latter still awaits close study. The tendency has grown to view *Dharmaśāstra* as subsidiary to *Arthaśāstra*, and indiscriminate use has been made of citations from the former to support or to confirm the doctrines of the latter, and this has been frequently done without reference to context. The attitude reverses the traditional view of the relative position of the two. Barring the sections styled *Rājanīti* or *Rājadharma* in the Epics and Purāṇas, as well as in the Smṛtis, which are regarded of value on account of their political content, and the sections which deal with the principles and rules governing the law of persons and property (*vyavahāra*), *Dharmaśāstra* are rejected or ignored as 'priestly twaddle.' But, politics and civil law form by no means the whole or even the major part of *Dharmaśāstra*; nor were they regarded by old writers of acumen, possessing a

sense of proportion and reality, as the most important. Otherwise, there is no meaning in writers, who display a subtlety and robustness of mind comparable to that of the best lawyers of our age or any other (*e.g.*, Vijñāneśvara, Lakṣmīdhara, Jīmūtavāhana, or Mādhava or Raghunandana) spending themselves on the elaboration of the parts of *Dharmaśāstra*, which are now rejected as useless.

This selective or differential treatment is largely the result of a historical accident. The early British administrators suddenly found their desks in the counting houses turned into the chairs of judges and magistrates. They had to govern people who were governed by *personal* laws, set forth in treatises written in languages which Europeans did not understand. The penal law, of the country, except in small islands of Hindu government, not submerged in the Muhammadan inundation, was Muhammadan and was based on the Koran and traditions. Warren Hastings, who had no compunction in enforcing a law which made forgery a capital offence, was outraged when he heard the sentence of a Kazi of Chittagong, which was in strict accord with Muhammadan Law, on certain persons guilty of robbery and violence. The substitution of a *penal* law from Europe for the laws of the two great communities was the first step in British administration, and the process was hastened by the Supreme Court.[1] Another step was taken when the civil law relating to person and property (*vyavahāra*) was taken up for translation. Halhed translated from a Persian version the Sanskrit digest of *vyavahāra* made to the order of the Governor-General. A more satisfactory work was demanded by Hindu opinion, and it was supplied by Jagannatha's *nibandha* on *vyavahāra*, still

[1] Founded in 1774.

unprinted, of which a part was translated in 1797, and is known as 'Colebrooke's Digest.'

Other translations of legal works, like the *vyavahāra* section of the *Mitākṣara* and the *Mayūkha*, the *Dāyabhāga* of Jīmūtavāhana, the *Dāyakramasaṁgraha* of S'rī Kṛṣṇa, and two well known treatises on the law of adoption followed, 'manuals of 'Hindu Law,' for the guidance of judges and lawyers ignorant of Sanskrit, were also compiled by Strange, Wilson and Macnaughten. Since their time, the addition to this branch of modern legal literature has been considerable, and has been largely due to the growth of case-law. In spite of increasing dependence on judicial decisions in the interpretation of Hindu law and usage, the desire for the study of treatises on *vyavahāra*, either in Sanskrit or in translations, did not sensibly diminish, mainly because the Bench began to be strengthened by the appointment of judges to whom the texts and local and caste usage held an appeal. Recently there was a mild flutter when an Indian member[1] of the Judicial Committee of the Privy Council made citations in Sanskrit in a judgment which he pronouced.

Apart from the question of proximate utility, the selection of the *vyavahāra* content of *Dharmaśāstra* for study is also due to the assumption that it alone dealt with the "secular" as contrasted with the "religious" aspects of Hindu life and activity. Such a division of the life of the Hindu is not however correct. Hindu thought does not recognise the distinction. Secular and religious considerations are inextricably interwoven in Hindu motives and actions. This feature is reflected in *Dharmaśāstra*. Legal capacity is held to rest on

[1] The Right Honorable Sir Shadilal, P. C.

spiritual. Legal competence can be affected by ceremonial impurity, by the commission or the omission of particular religious duties, and by their performance at proper and improper moments. This is why the treatment of *āsauca* (impurity arising from birth or death) and *kālanirṇaya* (determination of the proper time for doing prescribed things) occupies so large a space in Hindu legal literature. Some of the old rules may be argued as still operative. So critical a writer as Jimūtavāhana found it necessary to write, besides his two books on inheritance (*Dāyabhāga*) and procedure (*Vyavahāra-mātṛkā*) a much larger treatise on the " determination of suitable time " (*Kālaviveka*,) and Mādhavacārya also wrote a *Kālanirṇaya*. In old Indian criminal law, as in other archaic penal law, spiritual and secular punishments were intermixed. An offence was treated as both a sin and a crime. Much misunderstanding of the supposed one-sided and unfair discrimination in the award of punishments on a caste-basis is due to a failure to visualise that every offence had two sentences, *both* of which were usually operative. In a sceptical age like ours the sentence of a spiritual authority and the imposition of even an exacting penance or rite of expiation will be regarded as light in comparison with imprisonment, banishment or death, while mere refusal to admit a person even to the right of expiation, as a penalty for the gravest offences, will be viewed as virtually letting an offender off. But it is not right to interprete the beliefs and usages of one age by those of another. When life was viewed as continuous, and as extending over both ante-natal and *post-mortem* time, and when the idea that an unexpiated offence entailed very grave consequences in a future existence was implicity accepted, the deterrent effect of a denial of the right of expiation must have been very powerful. Civil status and competence was

held to be affected adversely by unfulfilled penance or purification, or by some defect in an enjoined ceremony or sacrament. This is why the treatment of sacraments (*saṃskāra*), purification (*śuddhi*) and expiatory rites (*prāyaścitta*) occupies such an important place in *Dharmaśāstra*). The so-called 'Brahman immunities' should be judged in relation to this attitude. Kauṭilya, who does not hesitate, when considering the punishment of treason against the state, to over-ride the *smṛti* rule that a Brahman cannot be put to death, denies even-maintenance to the apostate, with an exception in favour of the mother alone, because apostacy placed one beyond the pale of redemption by purificatory rites.

The assumption of a secular, as distinguished from a religious division in Indian legal and political literature is responsible for the magnification, in modern times, of *Arthaśāstra*, supposed to represent the realistic and secular, as contrasted with *Dharmaśāstra* reflecting the idealistic and religious element. The assumption of the origin of *Arthaśāstra*, from a secular source is opposed to Indian tradition, which attributes a semi-divine, or at least an inspired source to it. It was counted in *smṛtis* among the sources of law, to which judicial recognition was due. Judges and assessors (*sabhyāḥ*) were to be expert in both. *Arthaśāstra* was included either under *Atharva-veda*, or *Itihāsa*, described as the fifth Veda, or was counted by itself as a sixth Veda. The implication of this picturesque statement is that it had the authority, which any body of doctrine claiming to be a Veda will have, and yet, not being of the strict Vedic *corpus*, it was available, like the Epics and Purāṇas and the sciences and arts (*śilpa*, *kala*) placed under the fifth and sixth categories, to women and to men of the unregenerate castes (*Śūdrāntyajāḥ*) for

study. This feature made it very acceptable in periods in which, contrary to tradition and rule, thrones were occupied by non-Kṣatriyas and by women, and a considerable section of the population left the Brāhman fold to accept Buddhism and Jainism, which were outside the pale for denying the authority of the Veda.

The 'secular' character *Arthas'āstra* is another assumption which can be justified neither by its content nor context. *Arthas'āstra* shared the same beliefs as *Dharmas'āstra*. Its toleration of heresy was not new. Even before the days of Kauṭilya the Buddhist Sangha had become powerful. Under As'oka and his successors the heterodox position was further strengthened. Both As'oka and his successor Das'aratha patronised even the Ājīvakas, who were atheists. Manu refers to associations of heretics, whose usages must be upheld for their own members. The heretic might be a nuisance but an administrator could not ignore his existence in society, especially when he had a powerful following. This is why in *Rājanīti*, beginning with Kauṭilya, it is laid down that a king, in granting audience, should give preference to heretics, magicians, learned Brahmans and destitute women. Heterodoxy was often believed to possess a mystic power which was the source of its confidence. The rule is thus merely one of prudence. The recommendation of Kauṭilya that the philosophies to be included in royal studies should include Ānvīkṣikī, the Sāṁkhya, Yoga and Lokāyata, is coupled with the injuction that they should be learnt only from teachers of proved orthodoxy. Yājñavalkya, like Manu, recognises the customs of heretics (*pāṣaṇḍāh*), and the reference must be to the Buddhists. This is proof of the spirit of comprehension in *Dharmas'āstra*, of which another is the theory that it included *Arthas'āstra*. Manu's impatience

with those who followed *Artha* and *Kāma*, is not a condemnation of the subjects which dealt with them, but was aimed against those addicted to the excessive pursuit of wealth and pleasure. It is not open to infer from the existence, from Mauryan times, of separate courts for the trial of criminal and civil causes that the differentiation reflected a distinction between secular and religious law, for the matters were adjudicated on in both types of tribunal. Criminal jurisprudence was also assigned a divine origin, and Daṇḍa (the Spirit of Punishment) was held to have been divinely created. Differences between rules of *Dharmaśāstra* and *Arthaśāstra* are neither more numerous nor wider than those *within* each, according to different writers. From the postulates that *all* knowledge is ultimately based on eternal verity (*Veda*) and that apparent differences or conflict, merely indicate options, (*vikalpa*) it follows that the differences between the two *śāstras* must be viewed as capable of explanation and reconciliation. Revealed knowledge must be self-consistent. There cannot therefore be any real conflict between *Arthaśāstra* aud *Dharmaśāstra.* The hypothesis of divine origin invested both with the qualities of universality, consistency and permanence. It is inconsistent with belief in God's omniscience to presume that circumstances and contingencies, which arise from age to age, or differ place to place, are not foreseen and provided for in literature which springs from Divinity. One's inability to find a unifying principle between apparent opposites does not mean that such a principle does not exist and is not discoverable. Generalisations of this type paved the way for wide interpretation, and for the evolution of a science compounded of equity, logic, psychology, grammar, and rhetoric, to which the name *Mīmāṁsā*, came to be given. The rules of *Mīmāṁsā*, which later on underwent systematisation, are not unlike those

evolved in western law in regard to the interpretation of statute law, but they follow as corollaries from the premises of Hindu religion. First designed for Vedic exegesis, their application to *Dharmaśāstra* and *Arthaśāstra* compelled their further elaboration and consolidation as a coherent body of doctrine. The two subjects to which interpretation applied benefited from it, particularly *Dharmaśāstra*; for it survived, superseded and absorbed *Arthaśāstra*. The latter, which had enjoyed a vogue in and before the days of Kauṭilya and had been cultivated in many schools, ceased to command the old weight after the foundation of the powerful empire of the Mauryas and their successors. Its derivation from *S'ruti* made it as unacceptable to the Buddhist as the *Smṛti*. In the Brahmanical reaction under the S'ungas, Bhāraśivas and Vākāṭakas in North, and under the S'ātavāhanas and Pallavas in South India, an impatience of compromise was born. In the revision of *Dharmaśāstra* and of epic literature made in the epoch, the *Arthaśāstra* core of *smṛtis* was strengthened so well that *Arthaśāstra* ceased to have an independent existence. *Arthaśāstra* works adapted themselves to the changed *milieu*. Kāmandaka's *Nītisāra*, which claims to be based on Kauṭilya's work, adopts, like the *smṛti*; the *śloka* as the medium of expression. It rivals *Manusmṛti* in magnifying the power and position of the king. It omits the entire field of administration and law, leaving them to works like Manu's. It elaborates the technique of foreign relations, involving the mutual relations of rulers (*Rāja-maṇḍala*) and interests, forming groups ranging in number from sixteen to three-hundred-and-sixty. It stresses only those features of its original as were acceptable to the Brahman reaction. The difference between Kauṭilya and Kāmandaka is that between one who saw a great empire rise on the foundations of a number of small states, and

of one who witnessed the daily struggles and the shifting alliances of a number of precarious principalities. Later works, like those of Somadeva and Hemacandra, reflect the steady political decline, of which we have evidence in history.

The *Nītivākyāmṛta* of Somadeva is more a literary experiment than an original essay on politics. He reproduced in pithy sentences the words of Kauṭilya, but not the spirit. That was not to be expected. Temperamentally, the Mauryan king-maker and the pacific Jain ascetic were poles apart. The subject-matter of Somadeva's little book is more closely related to Kāmandaka's work than to Kāmandaka's famous original. Hemacandra's *Lagu-arhan-nīti* is more an imitation of the popular summary of *smṛti* rules (*e.g.* the *Smṛtisaṅgraha*) than a contribution to *Arthaśāstra*. Civil law is its chief topic. It reproduces the matter in digests, but without a reference to the ultimate and paramount authority of the Veda. Somadeva's book is taken upon with moral maxims. It could have little use to an administrator. Hemacandra's book might have been used in a Jain kingdom, like that of Kumārapāla, but it is, at its best, a poor substitute for the works of Hemacandra's contemporaries Vijñāneśvara and Lakṣmīdhara. The aim of the Jain monk and polyhistor was to establish his claim to all-round learning and not to add sensibly to the literature of polity or law. The literature of *Rājadharma*, contained in the later digests more properly belongs to *Dharmaśāstra*.

There is another reason for the imperfect comprehension of the scope of *Dharmaśāstra* and its content. It consists in the misunderstanding of the small quantum of "worldly" matter in *smṛtis*, particularly in those of the earlier and later

times, and its absence in many of them. On the other hand, there are *smṛtis* of the middle period (fifth to eighth century A.D.), which omit everything but the "civil law". *Nāradasmṛti* is an example. The lost works of S'ankha-Likhita, Hārīta (prose), Kātyāyana and Bṛhaspati seem to have had a large "civil law" content. The works of Manu and Yājñavalkya are comprehensive, and of the two, the latter, though very closedly related in doctrine and attitude to *Arthas'āstra* (perhaps even to Kauṭilya's work) is relatively sketchy on politics. *Parās'arasmṛti*, which commends itself as the one pre-eminently indicated for the present age, is pre-occupied with *ācāra* and *prāyasccitta* and ignores law and politics completely. Is it to be inferred that the subjects were regarded as of no value to the present age? The core of purely legal matter, in the modern sense, in the *Dharmasūtras* of Gautama, Āpastamba, Bodhāyana, Vasiṣṭha and Viṣṇu is thin, and forms in each work but a small proportion of the total. Lost verse *smṛtis* like those of Yama, Vyāsa and others, seem to have dealt with both sides, but it is impossible in their present fragmentary condition to guess the relative proportions of the two sections in their original state. The usual explanation is that the different proportions reflect the secular or unsecular bias of the writers. The *sūtras* and later *smṛtis* are supposed to have been preoccupied with religion and ceremonial, a few only dealing with "law", under the influence of *Arthas'āstra*. The later *smṛtis* belong roughly to the same age as Kāmandaka. If, under the influence of *Arthas'āstra*, they devoted themselves to legal questions to the exclusion of religious and half-religious-topics, it is remarkable that Kāmandaka, who was deliberately modelling his book on Kauṭilya's *Arthas'āstra*, should completely ignore civil law and administration, which form a glory of his original, though even in it, the

sections dealing with law proper form but a small part of the whole. Kāmandaka's omissions should therefore be explained, like that of Somadeva, on the ground that he assumed the prevalent civil codes like those of Nārada. The theory of bias must accordingly fail. An efficient cause may also be found in the literary form of *smṛti* literature of the earlier epoch, and the methods in vogue for the transmission of doctrine. The older *smṛtis* are not only in prose but in aphoristic prose (*sūtra*), devised for memorising and for economy. A *sūtra* was not intended to be *read*. The aphorisms would usually be unintelligible to the uninitiated. The purpose of aphorisms was to act as sign-posts, and keep the real exposition to the track. It was so in Buddhist as in Brahmanic literature. The *s'loka*, which came in to vogue later on was in some respects as useful. Its rhythm enabled it to stick to the memory, and it was more intelligible than a *sūtra*. But it lacked brevity, on which much store was set. In the earliest epochs of Vedic study, the *Kalpasūtra* would be taught in the school of the branch (*s'ākha*) of a particular Veda, and the traditional explanation would be handed down in the school. It would not be reduced to writing but be available for recitation in class. The paramount value of the teachings of the Buddha and the belief that the *Suttas* (sūtras) of the *Tripiṭaka* reproduced his actual words, made the early Buddhists arrange for recitations of *Suttas* in the annual gatherings of the *Saṅgha*. No similar compelling motive was present in the case of *Dharmas'ās'tras*, which did not always form part of the *Kalpasūtra* of any particular Vedic school. Their commentaries were handed down from teacher to pupil, and ran the risk of becoming lost, when those who possessed the traditional explanation perished. When *smṛti* material was reorganised as a collection (*saṁhitā*), in a comprehensive work, it incorporated much explanatory

material till then preserved by oral transmission. The *Manusmṛti* apparently incorporated much matter of the kind, as also the *Bṛhaspatismṛti*, judging from the character of its fragments. Invasions and wars must have interrupted the work of transmission. To such calamities must be attributed the loss of much *smṛti* material and the earliest commentaries embodying oral tradition. Among the lost commentaries that of Yajñasvāmin on Vasiṣṭha, Asahāya's *bhāṣyas* on Manu and Gautama, and the commentaries on Viṣṇu, Kātyāyana and Bṛhaspati must be counted. Again, the oldest commentaries on the *Dharamasūtras* are removed by centuries from their texts. We regard Karka, Maskarin and Haradatta as very old commentators, but between each of them and his original, twelve to fifteen centuries must have run. The distance in time between *Manusmṛti* and Medhātithi, or Yājñavalkya and Vis'varūpa is much less. It is only from the *bhāṣyas*, or elaborate commentaries, which came nearest the oral transmission of the interpretation of the *sūtra* literature, that one can form an idea of the space originally occupied by the different heads of a subject of the *sūtras*, and of the relative importance attached to them. For instance, the first four aphorisms of the *Brahmasūtra* are deemed relatively the most important in about a hundred and fifty, forming the whole, but they take up over a fourth of the whole space in the great commentaries of S'aṅkara and Rāmānuja. In the absence of continuous traditional interpretation, there was always the risk of misapprehension of the views of the original *sūtra*, even when shorter explanations embodying the traditional view, known as *vārttikāḥ* were supplied, as they were in many cases. But, even these were often criticised as not correctly conveying the meaning and drift of the *sūtra*, and the declared purpose of a *bhāṣya* was to explain, correct and supplement the *vārttika*. The *Mahābhāṣya* does so in regard

to the grammatical aphorisms of Pāṇini and the *vṛtti* of Kātyāyana. Kumārila does so in explaining the aphorisms of Jaimini and commenting on the *bhāsya* of S'abara.[1] Without *vārttika* and *bhāṣya*, a *sūtra* book is often not only not intelligible, but it is apt to mislead. Take the case of Kauṭilya's work. At the end of it, there is a *s'loka* which declares that having had experience of the contradictions between originals and commentaries, Viṣṇugupta (*i.e.* Kauṭilya) composed both the *sūtra* and the *bhāṣya*. The text of the *Arthas'āstra* of Kauṭilya is mostly in prose, though there are many verses interspersed. They have all been usually taken as *sūtra*. Mahāmahopādhyāya T. Gaṇapati S'āstri, to whom we owe both a good text and a valuable commentary, accepted the last *s'loka* as authentic, and regarded the brief statements of the content in the introductory chapter (*adhikaraṇa-samuddes'a*), which are reproduced at the beginning of chapters, as the original aphorisms (*sūtra*) and the substance of each chapter as the commentary of Kauṭilya. The view merits acceptance. The aphorisms are just like chapter headings nothing more. *Sūtras* like *Vyavahārasthāpana* and *Dāyabhāgaḥ* are just headings. Suppose only these aphorisms or headings survived from the work of Kauṭilya. Could anything be gathered from them of his views, which are now so well-known ? As verse *smṛtis* are often the lineal successors of *sūtra* works, the peculiarity may be postulated of them also. The long discussions of the great *bhāṣyakāras*, who commented at length on *Manusmṛti* and *Yājñavalkya-smṛti* will then be viewed as carrying on the tradition of the transmission of authentic interpretation of such aphoristic literature. The 'tacking' of Mādhavācārya, in his well-known commentary on *Parās'arasmṛti*, of a whole book

[1] Curiously, the works of Kumārila are entitled *vārttikās* and *ṭīkā*, while S'abara's work is styled *bhāṣya*.

of civil law (*vyavahāra*) and maxims of government to a quarter-verse of the *smṛti* (*Rājā dharmeṇa pālayet*) will then be recognised as not exceeding the legitimate duty of a commentator, and his elaboration of the civil law, which the original appears to ignore as not a mere *tour de force.*

Bhāṣyas and *nibandhas* (digests) continued to be written up to the threshold of our own times. Nevertheless, there has been an increasing neglect of *Dharmaśāstra*. It has not only shared the misfortune of all technical literature in Sanskrit through the drying up of the springs of patronage, but it has also suffered from another cause. The contact between European and Indian cultures in the 19th century produced, in Hindus, in the beginning an admiration for the former and induced an apologetic attitude for the supposed crudities of the latter. There came, later on, a new love for and pride in their ancient literature. But the revival helped only the study of the Veda and its auxiliaries, classical Sanskrit literature, and Indian philosophical systems. *Dharmaśāstra* had little share in the revived interest. Its very mass repelled all but the few who devoted their time to the *Kalpasūtras*, in their triple division of *śrauta*, *gṛhya* and *dharma*. *Manusmṛti* was an exception. It is illustrative of the indiscriminate trend of the movement that when translations of even the smaller *smṛtis* of Nārada, Viṣṇu and Bṛhaspati were included in Max Müller's "Sacred Books of the East," a version of the *samhitā* of Yājñavalkya, which had been so great an attraction, was not finally included in the series. Recent interest is due to lawyers and judges, who know Sanskrit. Indifference to *Dharmaśāstra* is still pretty general, and may be traced to the feeling that 'things that matter' like law and politics, are wanting in such "priestly" books. Most students have neither the patience nor the

conviction, which made Colebrooke obtain a grounding in *Mīmāṁsā*, which is so vital to an understanding of *Dharmas'āstra*, before he translated the *Digest* of Jagannātha.

The result is regrettable in view of the excellent progress made in the study of our history, and of the application of the comparative or historical method to law and politics. Sir Henry Maine's influence was an important factor of the change. It helped to supersede the analytical study of Indian law and politics by the historical. Institutions are now viewed as growths which suggest lines of evolution. The reciprocal influence of idea and environment is assumed and investigated. Institutions, movements and ideas are judged without bias. But, have these safeguards been applied in the study of *Dharmas'āstra*? Is it not a common tendency to assume ignorance, prejudice and self-interest as the ruling motives of hierarchy, and to regard them as present in *Dharmas'āstra*, because it apparently emanates from the priestly class? Even a cursory view of *Dharmas'āstra* must dispel such ideas. The critical faculty is not the monopoly of the modern age, any more than reasoned scepticism. S'abara indulges, in quite a 'modern' manner, in flings at priests and their selfishness when he comments on the purpose of some Vedic rites. Kauṭilya does not spare his own teacher. S'aṅkarabhaṭṭa does not spare his father, the renowned Kamalākara. Good faith and competence alone earn respect for authority from our 'legal' writers.

Doctrines which sound strange to us are not necessarily unsound. Nor can we presume that in an earlier age they were not considered reasonable and well-grounded. Take the instance of the doctrine that the king and the Brahman uphold the

world-order. The acutest writers of India accepted it, though they were aware of the weaknesses of individual rulers and Brahmans. Deliberate or veiled sophistry was certain of exposure in times in which logic was well-developed. Distortions of meaning were difficult when the rules of interpretation were clearly laid down and understood by those who used them. An author who misquoted a text, or altered its wording, would be promptly exposed. The care with which the texts were preserved, especially in technical literature, is seen in the way in which *bhāsyas* and digests notice and discuss even petty differences in reading. An authority opposed to one's own view is never ignored or suppressed. It is met squarely. The principle was enforced by the peculiar form adopted in exposition. The opposed statements were stated, then answered and the conclusion reached last. There were other conditions favouring literary integrity. Learning was localised in places like Kāśī, Paithān and Nāsik. The wandering scholar, who carried his library in his head, roamed about as a pilgrim and made his learning pay for the tour, helped to keep ideas and books in circulation. A new book soon acquired an *instantaneous* influence and recognition proportioned to its merit, even in far-off places, in an age which had not the advantages of printing. The conditions made for uniform texts as well as the spread of new methods, new ideas and new doctrines in areas far removed from those in which they were first promulgated. Critical estimates of the honesty, accuracy, and reliability of writers were carefully canvassed, and spread throughout the country. New writers had need to be careful. Rivalry between scholars was keen and criticism sharp and unsparing. The conditions were such as to ensure integrity in texts, accuracy and fidelity in interpretation, logic in inference, and absence of bias in application.

The spread of priestly impositions in such an atmosphere can be safely ruled out.

But it is largely on such presumptions and on defective understanding that many views of our day about *Dharmaśāstra* are based. J. J. Meyer, to take a distinguished example, discriminates between Indian works on magic and law, and places *Dharmaśāstra* under the former. The view is akin to that which ascribes the birth of civil law (*vyavahāra*) to the influence of political environment, and its incorporation into *Dharmaśāstra* to an alliance between king and priest. The small content of 'law' in *smṛtis*, the existence of two classes of Mauryan courts, and the assumption that Indian thought differentiates between "religious" and "secular" elements are responsible for these wrong generalisations. They fail to recognise either the importance of *unwritten law*, preserved in the recollection of assessors and judges, who *had* to be trained in *Dharmaśāstra*, or to the relative value to be attached to customary and king-made rules. Jolly's dictum that the characteristic of *Dharmaśāstra* is high-flown religious idealism expresses a kindred view. To describe *Arthaśāstra* as 'public law' and *Dharmaśāstra* as 'private law,' as a recent writer (B. K. Sarkar) does, is to miss the intimate relation between the Hindu state and family, and the duty of the former to correct irregularities of conduct by members of the latter.

The Indian king was believed to be responsible as much for the correct conduct (*ācāra*) of his subjects, and their performing the prescribed rites of expiation (*prāyascitta*) as for punishing them, when they violated the right of property or committed a crime. The *ācara* and *prāyascitta* sections of the *smṛti* cannot accordingly be put *outside* the "secular" law. The allied

distinction between *Arthaśāstra* and *Dharmaśāstra* on the plea that the former deals with *real-politik* and the latter with *ideals*, over-looks the fact that when judges and parties shared the same ideals, as expressed in *smṛtis*, ideals were translated into action, and that there was an " idealistic " element in *Arthaśāstra* as much as in *Dharmaśāstra*. Breloer's view that *Arthaśāstra* is " planned economy " is correct taken by itself, but the ' plan ' is part of a wider scheme of *social* organisation, laid down in *Dharmaśāstra*. Dr. K. P. Jayaswal's distinction between *Arthaśāstra*, *Rājanīti*, and *Dharmaśāstra* as that between " municipal and secular law ", " constitutional law," and " penance law " is not only based on superficial observation but on the disputable view of the origin and function of the two classes of Mauryan courts, and a failure to observe, that *Rājanīti* in the widest sense will include (as Sarkar realises), *all Dharmaśāstra*. The occasional identification of *Dharmaśāstra* and *vox populi* is due to the translation of ' *Mahājana*,' in a famous verse from the *Mahābhārata*, into ' the populace,' whereas it only means a magnanimous man learned in *Dharma*.

Illustrations can be multiplied of the prevailing misconception of *Dharmaśāstra* and its supposed rivals. Its primary cause is a failure to start, as in many *nibandhas*, with a chapter dealing with definitions of terms, (*paribhāṣā*) in which the term *Dharma* is explained. The word *Dharma* is indeed difficult to define, and Āpastamba, in a famous passage, states that it is best to gather its import from practice. Indian logic (*Nyāya*) defined it as an innate quality of the soul, action enjoined (*i.e.* by the Veda). The idea is further developed in *Mīmāṁsā*. *Dharma* is that which is signified by a direction and results in a benefit. The *Nyāya*

school held that an invisible effect, called *apūrva* attached itself to the soul by the performance of an enjoined act (*Dharma*), and lasted till the benefit actually accrued to the soul. *Dharma* was thus regarded as fixed in action. A school held that its effect was instantaneous, though its manifestation had to wait till death. The idea is akin to the belief that good and bad actions are inseparable from the soul and guide its pilgrimage through existences (*Karma, samsāra*). *Dharma* is viewed as the norm, which sustains the universe, and in this sense is somewhat like the Vedic *Ṛtam*, and the Greek Law of Nature. For practical purposes, *Dharma* can be taken as the innate principle of anything in virtue of which it is what it is. Analysed and applied, the conception becomes ethically duty, physically essential property, spirituality in religion, and righteousness or law in popular usage. Manu equates *Dharma* with merit flowing from doing the right thing (*puṇya*), and in that sense it is described as the only thing which follows the soul. The belief in a moral God leads to the identification of *Dharma* with the Deity. Viewed in its working, *Dharma* is law of cause and effect, and is described as destroying when violated and protecting when obeyed. Innate quality and potentiality are related ; so *Dharma* is taken to be the mean between the ideal and the possible. The many wide extensions which are given to the term by itself and in combination with qualifying words, is illustrated in the recently published *Dharmakośa*. The Buddhist adopted the concept, omitting the postulate of its being due to Vedic injunction. It becomes the root-principle of cosmic order, by finding which one can obtain liberation (*nirvāṇa*). It includes and underlies every law, physical, ethical, and human, and it is eternal. It forms therefore, along with the Buddha and the Saṅgha the *Triratna* (Three Jewels) of Buddhism.

Strictly construed, every science will thus be *Dharmaśāstra*, but the term was restricted to enjoined *human* action. So conceived, it was divided into *pravṛtti* and *nivṛtti Dharma*, according as its end was action or freedom from it, into ordinary and extra-ordinary, (*sādhāraṇa*, *asādhāraṇa*), into *iṣṭa* and *pūrta* (viewed from the standpoint of enjoined Vedic ritual), and as relating to *varṇa* (caste), station (*āśrama*), caste and station (*varṇāśrama*), quality (*guṇa*) and context (*nimitta*). The divisions were subdivided, as general, special, equal and emergent *e.g. Āśramadharma.*

If differences springing from detail are put aside, *Dharma* is the whole duty of man. It includes not only the relations of man to man, but of man to the Universe. Whatever is enjoined by authority or the inward promptings of conscience is *Dharma* and comes within the scope of *Dharmaśāstra.* In this sense its scope is encyclopaedic, and it comprehends all knowledge. This idea is implicit in the enumeration of the location of *Dharma* (*Dharmasthāna*) which brings all knowledge within it. The Purāṇas alone rival *Dharmaśāstra* in so a wide scope. Vijñāneśvara brings *Arthaśāstra*, on this among other grounds, under *Dharmaśāstra.* Apart from the relevance of legal medicine in any system of law, *Ayurveda* (Medicine) is one of the *Dharmasthānas.* So are Astrology, (*Jyautiṣa*) and Natural Science (*Lakṣaṇa*). Two famous collections, both of *Dharmaśāstra*, made in the 16th century illustrate this view. Mitramiśra's *Vīramitrodaya* has these branches among its 22 books. So has Todar Mal's less famous *Dharmasaukhya.* Sometimes, the relevant information from a branch may alone be brought in; as medical knowledge in the treatment of grievous hurt, questions of paternity determination, the relative position of twin children, the liabilities of

professional soldiers, etc. But certain sections were deemed essential in a *Dharmaśāstra*.

The best example of a complete *Dharma* digest (*Dharma-nibandha*) is the *Kṛtyakalpataru* of Bhaṭṭa Lakṣmīdhara. It is the oldest now available, and one of the most comprehensive and authoritative. It adopts a special arrangement not found in other digests. Taking the life of man to begin (as Hindu jurisprudence held it to begin) with conception in the womb, and to end in salvation after death (*Mokṣa*), Lakṣmīdhara expounds the traditional view of the public and private duties of man in a sequence following the progress of life and station. The first book begins with the period of dedicated study (*Brahmacarya*). The second is devoted to the house-holder, *i.e.*, the ordinary citizen (*Gṛhastha*), and the third to the daily and periodical duties, and the proper time for their performance (*Niyatakāla*). The offering of oblations to ancestors is an essential duty, signifying the continued existence of the family. The ceremonies connected with this duty (*S'rāddha*) occupy the fourth book. In the Iron Age (*Kaliyuga*) an easy way of acquiring merit is by making gifts (*Dāna*) which form the subject of the *fifth* book. The dedication of objects of worship (*Pratiṣṭhā*), and the rites of worship (*Pūjā*) take up the next two sections. Merit (*puṇya*) accrues and demerit disappears. Pilgrimages to holy places or streams (*Tīrtha*) are performed. But pilgrimage cannot get rid of the need for ceremonial expiation, which is prescribed for all transgressions. The rites of expiation (*Prāyascitta*) perhaps took up another entire book which is now lost. Ceremonial impurity is believed to arise from birth, death, action, and contact. Purification from such impurity (*S'uddhi*) is therefore next dealt with. Thus far all the sections are common to persons

irrespective of their civil status. But, kings have not only to enforce, as part of their regal duty, the performance by every one of his special duty, but they have other duties springing from the headship of society. These are brought together in a separate section, named *Rājadharmakāṇda*. The commonest work of the king, in a society, in which public opinion largely enforces the performance of religious and sacramental duties, even apart from State-compulsion, is that of seeing that every man's person, property and status are not violated by any other person. Disputes concerning these come under *Vyavahāra*, with its eighteen conventional titles. The two sections ordinarily viewed as politics and law, form the twelfth and eleventh books. Among the duties of the king was that of performing public ceremonies, believed to be able to combat evil influences threatening society or its head. Misfortune is heralded by alarming portents (*adbhuta*). The treatment of these is taken up in the thirteenth section on propitiation (*S'ānti*). To every one comes death, and the way to release (*Mokṣa*) if life has been properly lived. Its treatment concludes a vast treatise in fourteen sections, typical of the content of *Dharmas'āstra*.

Lakṣmīdhara's great book was written to a king's order. It has been described to show the correct view of the scope of a *smṛti* or *nibandha*. Many digests were written subsequently, but with the exception of *Vīramitrodaya*, none *formally* treats of all the sections in the *Kṛtyakalpataru*, though more or less the same matter is distributed in them. Sometimes, entire sections are omitted in certain digests, *e.g. Rājadharma*, in the narrower sense, in *Smṛticandrikā*, and *Vyavahāra* and *Rājadharma* in *Smṛtīmuktāphala*, to refer to two digests with which we are familiar in South India. Their authors had

no political and forensic experience and so they refrained from dealing with what they did not know. The same reason will explain why Candesvara omits the sections dealing with consecration, purification, expiation, propitiation and salvation in his *Ratnākara*. He was a Ṭhakur and not a *full* Brahman. Lakṣmīdhara was not merely a learned Brahman, but he had held successively every major administrative office, under a powerful king, before he commenced his digest. He did not feel debarred either by want of administrative experience or of *S'rotriya* status from dealing with *every* division or topic of *Dharma*.

The correct perception of the scope and content of *Dharmas'āstra*, and of the means of ascertaining *Dharma*, requires, as an antecedent condition, a grasp of the major assumptions or postulates of Indian belief and their logical implications. The more important of them may be indicated. First in importance were two allied hypotheses: " *Dharma* has its root and finds its sanction in revelation (Veda)," and " the *sole* subject of revealed literature (Veda) is *Dharma*." The Veda is boundless, eternal, uncreated, omniscient, and consistent with itself and ultimate reality. In its branches, and in the knowledge derived from it, it is one-pointed. All of them aim at a common goal, teach the same doctrine, and their authority is equal. The purpose of life is four-fold, *viz.* the pursuit of welfare, of pleasure and salvation, (*artha*, *kāma*, *mokṣa*) along with the performance of *Dharma*; and the four-fold purpose corresponds to and is rendered possible of attainment by the four-fold division of the population (*cāturvarna*) and the four-fold division of life (*caturās'rama*). From these premises a number of inferences of importance for the determination of valid conclusions were drawn by close reasoning. They

demanded and obtained universal acceptance. A few of them may be mentioned illustratively. The hypotheses in regard to the Veda led to the conclusion that any rule in a *smṛti* for which a Vedic source can be found becomes invested with the infallibility of the Veda, and its binding authority cannot be questioned. The first duty of a commentator is to search the Veda for the authority for any rule. S'abara, Kumārila and later writers of *Mīmāṁsā* revel in such research. Vis'varūpa excels in finding Vedic authority for the text of Yājñavalkya, and Medhātithi for that of Manu. Since the Veda is limitless, it might be presumed that a portion of it has still to be found. But as human ingenuity and skill cannot be equal, in our degenerate times, to the discovery of the Vedic source of *every smṛti* rule, those rules for which such an origin cannot be found, are not to be rejected, if they are still found in a *smṛti*, as that raises the presumption that the author of it had the Vedic source before him which eludes the commentator. Its operation will therefore be held in suspense. The Veda is the bed-rock of Hindu religion. As *Dharma* is its only relevant content, the science which lays down *Dharma* (*Dharmas'āstra*) has the binding character of revelation. The hypothesis that *Dharma* creates a benefit, which attaches itself to the soul (*ātman*) leading to a happy result ultimately, made the exact study of *Dharmas'āstra* a paramount duty.

An infallible Veda cannot contain any internal inconsistency. Nor can it be really in conflict with what is manifest to experience. Since all knowledge has an ultimate Vedic basis, every branch of knowledge must be in accord with every other. Veda and *smṛti* must agree; so should *smṛti* and *smṛti*, *smṛti* and Purāṇa, and so on. The practice of good

men, *i.e.*, men brought up in a proper tradition, should be presumed to be in accord with Vedic injunction, and be accepted as a guide to conduct. Hereditary practice must raise a similar presumption, and so also common usage or custom. When there is an apparent discord between a rule derived from one source and that from another, every endeavour should be made to reconcile them. *Smṛti* like the Veda is limitless in extent. Hence, even an unnamed or unidentified *smṛti* text, (*smṛtyantara*) must not be rejected, unless it is manifestly a forgery. So with a Purāṇa, or even an Upapurāṇa. There should be a close search for internal consistency. Caution is necessary in accepting guidance in so vast a field, and there should be no hesitation in rejecting unauthentic rules. An illustration may be given. The rule that a boy, who had undergone *samskāras* ending with investiture (*upanayana*) in the father's house, cannot be taken in adoption is laid down in the *Kālikā Purāṇa.* After showing that the text, even if genuine, should be construed differently, Nīlakanṭha and Anantadeva ultimately reject it, as it was not found in several MSS. of the Purāṇa, and so was unauthentic. The license to search for sanction over so wide field did not lead to carelessness. It induced on the other hand exceptional vigilance in scrutinising every text cited as authority. The rules of interpretation were made more critical, refined and subtle, and so was also their application to the interpretation of rules of *Dharma* as guiding conduct.

The interpretation of *Dharma* and the adjudication of disputes on its basis was obviously not work for amateurs. To have the King preside over a court and hear cases might be embarrassing. He was therefore replaced by the trained judge, and the equally trained assessors who were to find the

verdict. It was open even to an expert visitor to intervene in a trial and state his view as *amicus curiae.* When there was either conflict between rules or authority, or between rule and usage, or when no rule could be found or the custom cited had to be examined for evidence of authenticity, the questions were to be decided by an *ad hoc* commission of experts, called *pariṣad*, for the constitution of which elaborate rules were laid down. These were three safeguards to ensure proper adjudication. A fourth lay in the power conferred on an expert to state the law on a disputed point, (like a jurisconsult) as a *vyavasthā*, and the medieval collections of *vyavasthās* were not unlike *responsa prudentam* in Rome. The opinion of a commentator or digest was to be honoured as *vyavasthā.* Special treatises on moot points (*dvaita-nirṇaya*) commanded the respect they deserved.

But for all decisions and their soundness the ultimate responsibility was laid on the king or the state. It was in this way that *Dharmaśāstra* in its comprehensive sense became the law of the country, and as it was the king who enforced its rules, it became *Rājadharma*

II

THE first impression created by even a superficial view of the extant literature of *Dharmaśāstra* is its vastness. But what has survived is only a very small part of what must have been composed. Indian social and literary history testifies to tireless industry in the production of this form of literature amidst the storm and stress of the centuries. Calamities like barbarian invasion, internecine war, the impact of alien religions and cultures and political vicissitudes were powerless to stay the creative activity. In such circumstances a disproportionately large number of the intellectual and religious leaders of the community must have been eliminated, even if they were not deliberately singled out for extirpation by a ruler of an hostile religion or culture. Protracted wars have usually resulted in a cultural set-back, and the recovery takes times. That it worked so in India also cannot be doubted. But the wonderful activity in the cultivation of *Dharmaśāstra* continued, almost without cessation, even in the middle of wars and foreign invasions, and was sometimes even helped by them. What is the cause of the paradox? What is the compelling influence which gave the subject an enduring vitality and power of recuperation? An answer to the questions throws light not only on the vitality of a subject, which was closely associated with religion and regulated modes of life, but it reveals special features of the

governments of the time and their relations to the lives of the people.

Dharmaśāstra, like religion, dealt with the whole life, not with only a part of it. No one was outside its jurisdiction: the individual, the family, the corporations, and the king were all under it. It upheld the ideal of an indissoluble union between state and society, and king and subject. The welfare of the king was held to be rooted in the well-being of the people. Political union was sanctified by religious sanction. The King and Daṇḍa, the Spirit of Punishment (the power of sanction) were both of divine creation. Anarchy was abhorred. A condition of statelessness was conceivable only in the Golden Age. The doctrines of *karma* and *saṁsāra* linked like in this world with other existences and with the world order. A reciprocal influence, generated by *Dharma*, was believed to connect right or wrong living with cosmic influences of a supernatural character. Good government ensured the happiness of the people and it did so by bringing into operation beneficent influences which made happiness certain. Under ideal rule, like that of Rāma, unhappiness and sorrow were unknown. A good king reproduced the conditions of the Golden Age, and a bad one intensified the sufferings of the Iron Age. On the king lies a responsibility, which cannot be shifted or shirked. He is the maker of the age (*Rāja kālasya kāraṇam*). The theory of this awful responsibility of the state was enforced by telling illustrations. An Arjuna was given the name of the Hero of the Golden Age (*Kārta-vīrya*) because he was so vigilant that he corrected in his subjects even the impulse to wrong-doing. Rāma was described as having produced in an age of less perfection the ideal conditions of the Golden Age

(*Tretā-yuga-pravartita-kārta-yuga-vṛttānta*). The union of king and subject was like that of soul and body. An evil ruler must be expelled. Taxes are the king's wages; he must earn them by good government. His freedom to do what he likes ends with his coronation (*abhiṣeka*). Thence forward his life is dedicated to the maintenance of *Dharma*.

Faith in the reciprocal influence of human righteousness and the order of the universe, which is a teaching of religion, was thus harnessed to social comity, mutual co-operation and obedience to the state. To disobey the king was not merely imprudent; it was a deriliction of *Dharma*. Conversely oppression was not only risky and foolish, but it was *A-dharma*, and will lead to prompt retribution both in this world and in others. The fire engendered in the hearts of men by tyrannical rule will burn the king and his dynasty. If God (Viṣṇu) is in the king, He is no less in the subject.

These high conceptions of duty lead to the proposition that good government requires a correct knowledge of *Dharma* on the part of the ruler. He should know not only his own duties but *fully* visualise those of every one else in the kingdom. Unhappiness is a sign of error in governing; and as it springs often from social misfits, the discovery and correction of such misfits is a primary duty of the state. As all duties are implicit in *Dharma*, its vast literature and sources must be explored for the discovery of remedies for injustice and evil, and for the solution of problems continuously thrown up by changing times and circumstances. The belief in the divine character of *Dharma* and its universality of applicability to all times and circumstances, makes the discovery of remedies to social evils, the aim of research in *Dharma*. *Dharma* adjusts

obligation to capacity. How far would the principle justify reduction of the weight of caste duties in times of stress, or in the general decline of the Iron Age? Were rules to be the same after the ravages of war, conquest, alien settlement, the penetration into society of the barbarian (*mleccha*), the multiplicity of economic occupation, enforced departures from functional grouping, and divorce of privilege and the merit to justify it?

In the answers to such questions will be found the re-orientation of *Dharma*. The adjustment of law to the needs of society has usually been made in three ways: by legal fiction, by equity and by legislation. In the evolution of *Dharma* by interpretation and by research, we can see the influence of the first two but not of the third. But, unlike the fictions, which were deliberately used by the civil lawyers of Europe, for reconciling the letter of the law and the needs of society, the hypotheses which served the same purpose in India were those which were believed in as part of religious dogma. The possibility of a sceptical jurist in ancient or medieval India cannot be ruled out, but the probabilities are that every change made by interpretation was made in the honest belief that it was necessary to vindicate *Dharma*.

Even advanced thinkers are usually the creatures of their age. A study of the variations of opinion among Indian writers on *Dharmaśāstra* will not disclose much chronological progress in ideas, and so-called "liberal views" may be found in writers of earlier and "conservative" leaning in those of later times. The existence of schools clustering round a great teacher or writer like Kauṭilya might lead to progress *within* the school. Of this we have parallel evidence in Indian

systems of philosophy. But till a late stage, cleavages of opinion, which would have led to the formation of schools of thought, did not arise in *Dharmas'āstra*, though we can trace divergence of opinion far back. Later differences have been classified as 'schools' and been treated as racial and provincial, though to those who held the views aimed at tenets, the universal acceptance.

The Mauryan empire saw Buddhism rise to the rank of an Imperial religion, but Buddhism was heresy, according to *Dharmas'āstra*. The period of barbarian invasions which followed the break-down of the empire of Magadha raised new problems of adjustment. Among them, the most important were readmission to *varṇas* of those who had gone out of them voluntarily or otherwise, the restitution of rights to abducted and outraged women, condonation (after purificatory or expiatory rites) of breaches of duty and failure to observe the sacramental rules, a new attitude towards non-kṣatriya kings, the recognition of renunciation (*saṁnyāsa*) by others than Brahmans, acceptance of foreigners who embraced Brahmanism, the reduction of ceremonies which were beyond the strength of the people in altered conditions, permission of divorce and remarriage of women, and realignment privilege and duty to position and responsibility.

The hypothesis that *Dharma* was good for all time and all circumstances acted as the Law of Nature did in the evolution of Roman law. The processes by which the adjustment of *Dharma* was insensibly effected were, however, natural and logically followed from the primary hypothesis. The general lines are clear. *Smṛtis* were classified into those which had a 'visible' and an 'invisible' purpose (*dṛṣṭārtha* and

adṛṣṭārtha). To the former Vedic infallibility did not apply as their aim was wealth and pleasure as contrasted with the performance of enjoined duty and salvation of the latter. The latter prevailed over the former. Secondly, the authority of a *smṛti* depended on its merit *sui generis*. In a remarkable passage, Medhātithi dismisses the enumeration of valid *smṛtis* as futile because there is no end to it, and even a *smṛti* composed in the present generation might, if its doctrine was sound, become an authority. Thirdly, the rule of logical interpretation (*nyāya*) which Kauṭilya advocated and Manu condemned, received wide support. Fourthly, the application of valid usage was helped by the injunction to make official records of custom. Customary law was systematised, classified and made applicable to the groups concerned. The doctrine that weakness demands reduced rigor in penance, took the form of *Yuga-dharma*, accepted in the sense, not that it *alone* is operative universally in the *Yuga* or age concerned, but that it gives an option for a lenient construction of duty. The recommendation of gifts (*dāna*) and faith (*bhakti*) in preference to sacrifice (*Yajña*) and penance (*prāyasccitta*), the acceptance of the principle of substitution (*pratinidhi*) to meet cases in which the original cannot be produced (*e.g. kricchra* replaced by a money gift to one who does it for the donor), and the principle that certain ancient rites, which were not recommended, may be omitted in Kali-yuga (*Kalivarjyas*), moved in this direction. In the last category, it was the tendency to include customs which had gone out of use, like the levirate (*niyoga*) or rites which became impracticable (like the *Aśvamedha* sacrifice). Rules of pollution (in the case of town life as pointed out by Nanda Paṇḍita) were relaxed in marriages, festivals, pilgrimage, war and personal danger. The practice of referring questions

to *Pariṣads* gained ground, and caste-pariṣads to settle caste rules came into vogue, in imitation of the original.

These changes, along with the appearance on the stage of rulers who accepted the responsibility to enforce *Dharma*, but had not been brought up in the old tradition, necessitated a recasting of *smṛti* literature. When a political purpose was behind the recasting, as has been suggested by the late Dr. Jayaswal, in regard to *Manusmṛti*, the rules tended to go back to the old ideals, *e.g.* the condemnation of S'ūdra mendicancy and celibacy, and magnification of the Brahman. The new dynasties, which were either contemporaries of the S'ungas or came after them, were of dubious caste. Greeks and Scythians, who had no strong religion of their own, and no caste system embraced Brahmanism, and showed excessive zeal like all converts. The horse-sacrifice, which is one of the *Kalivarjyas*, is performed by rulers of doubtful caste, as well as by Brahman Kings like Puṣyamitra and the Bhāras'ivas. The S'ātakarṇis and the early Pallava rulers performed it. So did the Kadambas and the Gaṅgas, as well as the Vākāṭakas. Even the Kuṣān Vasiṣka claims to have done one. Samudragupta, who raised a principality to an empire, and gloried in his relation to an out-caste class, performed two horse sacrifices. Heliodorus, a Greek envoy, calls himself a devotee of Viṣṇu (bhāgavata) and erects a column in a Viṣṇu temple. The Huns, who were more cruel than other invaders, become worshippers of Viṣṇu. The depressing conditions of the age are reflected in an increasing addiction to magic. The altered circumstances are seen in the new *smṛtis* and Purāṇas. The literary Renaissance of the Gupta epoch shows the fillip given to new forms of old ideals under the inspiration of the Gupta dynasty. An empire has to be governed.

Civil law is more complex and requires specialists to enunciate it. The demand is met by the versified *smṛtis* of Yājñavalkya, Bṛhaspati, Nārada and Kātyāyana.

Cleavages of opinion between the *smṛtis* and their interpreters necessitate the production of adequate scholia. The new commentator cannot however rest content with *brief* explanations. He must attempt an exposition (*Bhāṣya*). Asahāya (600 A.D.), Vis'varūpa (800 A.D.), Medhātithi (850 A.D.) illustrate this movement. The powerful support given to the spread of *Mīmāṁsā* doctrine by Kumārila and to philosophical speculation by S'aṅkara swept away the lingering remnants of Buddhism. *Mīmāṁsā* also furnished a potent instrument of *smṛti* interpretation. New dynasties came to power from the eighth century onwards, and history repeated itself. A great impetus was again given to the writing of commentaries and digests. The first experiments in 'legal' comprehension took the form of condensed *verse* summaries of the conclusions of the major *smṛtis*, which could be memorised and commented on in schools. Examples of it are Medhātithi's lost *Smṛtiviveka* and the anonymous *Smṛtisārasaṅgraha*, *Caturviṁs'atimata* and *Ṣaṭtriṁs'anmata*, but even these did not meet the new demand for *full* enunciation of *Dharma*. New motives for re-examination of the content of *Dharma* literature came after the Musalman invasions and settlement. There had been wholesale enslavement and forcible conversion to Islam of Hindu men and women. The attempt to rehabilitate them is reflected in *Devalasmṛti*, which declares with vehemence that all *smṛtis* opposed to it were void. The new Rājput dynasties, which came into prominence after the eleventh century, like the Gāharwārs of Kanauj, the Paramārs of Mālva, and the Yādavas of Devagiri were fervidly Hindu. Nothing but wholesale

recapitulation of *Dharmaśāstra* will satisfy them. Large digests (*Nibandhāḥ*) become the fashion in every Court. We have lost King Bhoja's celebrated digest, Gopāla's *Kāmadhenu* and several other works of the kind, born of this movement. The *Mitākṣara* is virtually a digest though greatly limited by its text. The ruler of a modest kingdom in Konkan, the S'ilāhara Aparārka, wins lasting fame by an extensive commentary on *Yājñavalkyasmṛti*. But the most exhaustive of the digests is easily the *Kṛtyakalpataru* produced by Lakṣmīdhara, by command of king Govindacandra. In Bengal, Bāllālasena and his teacher Aniruddha produced great digests. The stupendous digest of Hemādri, which covered only part of the ground, was the contribution of the new kingdom of Devagiri.

The later digests like those of Vis'ves'varabhaṭṭa, Madanasimha and Dalapati are useful, along with the digests of Caṇḍesvara and Vācaspati Mis'ra, in showing how even under Muhammadan rule, the devotion to Hindu *Dharma* was sustained. The impulse to compose treatises on *Dharmaśāstra* showed no sign of weakening, whether the head of the Musalman empire was a broad-minded ruler like Akbar or a staunch iconoclast like Aurangzib. We owe the great digest of Mitra Mis'ra to the revivalist zeal of a Bunḍela prince, who ambushed Abul Fazl, and became the friend of Jahangir. The still better known *Mayūkhas* were composed to the order of a petty Hindu chieftain. The production of such works in an epoch in which no Hindu ruler in Hindustan enjoyed independence, or under the patronage of Musalman rulers, was due to either or both of two motives, *viz.*, the desire to acquire merit by causing to be written, a great work which will be as a guide to more fortunate rulers in the future, and secondly, to have for their own guidance in the small

areas under their own rule, suitable codes of the *full* Hindu *Dharma*. The revivalist influence coupled with the ambition of new dynasties in commissioning great treatises is best illustrated by the first kings of Vijayanagara under whom Mādhava wrote his famous works, including the commentary on Parāśara.

Side by side with the production of digests and commentaries went on the writing of treatises on controverted points (*Dvaita-Nirṇaya*). They are most common in the literature of Mithila in the fifteenth and sixteenth centuries.

It was impossible to compose a new *nibandha* for the purpose of settling a number of minor questions in dispute. The composition of a *nibandha* involved an amount of labour which could be done only by a large body of scholars acting under the supervision of a master. Nor could the doubtful points of *Dharma* be settled by convoking *Pariṣads*, as men with the needed qualifications could not be secured. A permanent commission of legal reference was also out of the question. The *Paṇḍita* of the royal Court, the successor of the ancient *Purodhā*, had begun to replace him even in the Gupta period. *S'ukranīti* (12th century) makes it the duty of the *Paṇḍita* to consider laws which appear to run counter to tradition and worldly experience and advise the king on suitable action. The work of *Pariṣads* was sometimes done by the assemblies of paṇḍits specially convened in places like Kāsī, Paithan and Nāsik, where there was always a number of learned men.

The increase in the number of digests and commentaries did not altogether get rid of the embarrassment caused by conflict of views and doctrine. A conscientious ruler could

not easily commission a new digest. It was an expensive business, requiring the services of a large number of scholars working under the direction of the digest-maker. The *Mīmāṁsā* rule allowing an option (*vikalpa*), wherever two or more unreconciled positions had each separate authority, tended to increase confusion. If the matter was to be settled a way was open. If the king, *as well as his people*, ceased to believe in traditional *Dharma*, the ruler could proceed to frame by royal edict a new body of simple, compact and uptodate laws. But if the king or the bulk of his subjects were orthodox, and relied on *Dharmas'āstra*, the course was open only if they felt that it was possible to supersede *Dharmas'āstra* by royal edict (*rājas'āsana*), giving it the precedence, which it appeared to have in Kauṭilya's *Artha-s'āstra*. But the passage was interpreted, as the similar one of Yājñavalkya, as implying only the power of a king to *declare* the law which was not in opposition to *Dharma*, in cases in which there was doubt, and not as vesting in a ruler concurrent or superior law-making authority. Consistency required that the authority for the alleged power should be considered in its context and read with the injunctions, found in both *Arthas'āstra* and *Dharmas'āstra*, enjoining the king to adhere to *Dharma*. Both brought the king within the jurisdiction of law, and allowed decisions to be given against him in his own courts. Medhātithi roundly declared that a king cannot make a law over-riding *Dharma*. The personification of the power of punishment as a divinity was a picturesque way of expressing the view that the king is subject to law. The evidence of history does not disclose any exercise of the alleged regal power of *independent* legislation. As'oka, who declared *Dharma* in his edicts, merely enunciated doctrines which were equally acceptable to Brahman as well as to Buddhist.

He dealt with what would have been called *Sādhāraṇa*, *i.e.*, ordinary, *Dharma*. What little evidence there is appears to run counter to the claim. The point may be illustrated. In old Indian law, theft was a capital offence. The receiver of stolen property, even if he took it in good faith, or in the ordinary way of trade, *might* become liable to punishment. It is stated by Daṇḍin that the Mauryas made a rule that in cases where such property was found in the possession of merchants, the presumption should be of their innocence, and that they should not be punished as receivers of stolen property. The interpretation is equitable. In Indian law, the value of stolen property which was not recovered by the king had to be made good by him. A rule of the kind, alleged to have been made by the Mauryas, could only add to the king's own liability. Another instance is of a small alteration which Aśoka claims to have made in criminal procedure. In Ancient India, the passing of a capital sentence was followed by immediate action. There was no time between sentence and execution. Aśoka claims to have granted to such an offender a respite of three days, after sentence of death had been passed, to enable him to make his arrangements for spiritual benefit. It is noteworthy that Aśoka did not claim a power of reprieve. In the *Rājadharmakāṇḍa* we have recommendations to kings to release prisoners on the occasion of their coronation. But there is a universal exception to the royal power of pardon, and that is in regard to the sentence of death, which cannot be set aside by a king. Aśoka who forbade the slaughter of animals, restricted the prohibition to the royal kitchen, and there is no evidence of his having interdicted the Vedic sacrifices. His prohibition of caponing and castration was merely an enforcement of the *Dharma* rule against *bhrūṇahatyā*. It is open to presume that if he felt he could change the law in the case of capital offences, the merciful

emperor might have exercised the power. His absention should be construed in support of the position of *Dharmas'āstra* that legislation by edict can *declare* law, but not *make* law *contrary* to *Dharma*. The unnamed Maurya of Daṇḍin might have been the great emperor himself. It is significant that a Buddhist ruler should have been chary of making a change of traditional *Dharma*, and his frequent references to *Dhamma*, usually taken as allusions to the Buddhist *Dhamma*, may as legitimately be viewed as to the Brahmanical *Dharma*. His *Dharmavijaya* is conquest according to the humane rules prescribed by *Dharmas'āstra*. His *Dharma-amātya* was no other than the *Dharmādhikārī*. As'oka's partiality for the term might have been due to policy; even a Buddhist ruler must conform to the *Dharma* of his subjects. It may be noted that the Satraps of the Dakhan and the Pallavas, both reputed foreigners, styled themselves *Dharmarājas*. The Kadambas of Banavāsi, who could not have ruled in strict accord with *Dharmas'āstra*, took the title. The Gaṅgas of Talkād did so too. Over the seas, the Kauṇḍinya emperors of Campā (*e.g.* Bhadravarman, c. 400 A. D.) took the title. The Colas gloried in keeping, like Kālidāsa's hero-king, to the rules of Manu. The drift of the evidence is one-pointed.

What was expected from the king indicates what the state was competent to do. It may be gathered from the evils which a condition of anarchy (*arājatā*) was supposed to generate, and which the king was to ward off. Among the things which disappear in anarchy, prominent mention is made of the worship of gods, *Dharma*, sacrifices and freedom. The discharge of the primary state-duty of protection (*paripālanam*) ensures freedom; but the other functions imply the use of directive, regulative and coercive power of the state

in the interests of *Dharma*. The list should be read with the accounts of barbarian (*mleccha*) rule given by the Purāṇas, as his characteristic was that he contravened *Dharma*. The *Viṣṇu-purāṇa* counts among the enormities perpetrated by the *mleccha* (the Indo-Bactrian and Indo-Scythian) the slaughter of Brahmans, women and children, killing of kine, greed and unjust taxation, violence, internecine war (*hatvā caiva-paras-param*) and omission of the rite of coronation. The mixture of offences against humanity, sound economy, sound polity and ritual should be noted. They are, in popular belief, the signs of Kali, the personification of Evil. Every king who, in medieval times, either ordered the codification of *Dharma* or did it himself, is described as freeing his kingdom from Kali by the service. The royal champion of *Dharma* stood not for mere morality but for religion. It is in this sense that the king is classed with the Brahman as the prop of world-order. The curious suggestion that this statement refers to an old rivalry between civil power and the sacerdotal, which was ended by the alliance of king and priest in their mutual interest, is based on misconceptions, among which that of the division of functions between the courts of justice in which the judges and assessors were Brahmans, who declared the law and found the verdict on the evidence, and the executive authority which implemented the judgment, stands foremost. The education of a prince, on the lines indicated in *Arthaśāstra* and *Smṛti*, for his future office would be possible only if the prince succeeds by hereditary right to an old established throne, in a small kingdom. A self-made ruler of a non-kṣatriya caste, who builds up a large kingdom, will neither have had the antecedent education for his office, nor the inclination and facilities to get it after the establishment of his authority and power. He would be

more dependent on his Brahman guides in regard to *Dharma* than a prince educated in the old royal curriculum. His acceptance of traditional duty will be even more complete, because it will be done with less understanding and with more desire for popular applause.

The atmosphere will be unsuitable for either the claim or the exercise of law-making by edict. Dependence for changes necessitated by altered conditions of life and time, will be exclusively on interpretation, involving the silent application of hypotheses and equity. That changes of far-reaching character *did* take place in the law (*dharma*) relating to almost every department of personal and public relationship is undeniable and will be illustrated later. A change, even one of a radical character, will not appear as revolutionary and as against *Dharma*, because of the belief in its eternal justice and its all-embracing character. Opposed positions will be viewed as instances of option (*vikalpa*), when properly vouched for, and will illustrate the latitude allowed by *Dharma*, when properly understood.

It is easy to give illustrations of the changes which took place, and which were manifestly due to the pressure of public opinion and the inner promptings of what may be termed the 'social conscience.' The first in importance is the altered attitude towards the relative position of the 'sources'. The increasing dependence on usage (*caritra*), on the doctrine of equal validity of all texts, (*ekavākyatva*), on anonymous texts (*e.g.*, citations like "*iti smṛtih*", "*smṛtyantare*", "*evamucyate*"), on 'justice and good conscience' (*saṁkalpa, ātmanastuṣṭih*), insight and intuition (*yukti*) and 'the practice of the elect' (*śiṣṭā-cāra*), is evident, and it helped the process. Bṛhaspati

accepts even the usage of castes springing from condemned unions (*pratiloma*). There was also a tendency to emphasise the consultation of the expert, so as to bring in professional rules under valid custom. The digests illustrate the change in attitude. Mitra Mis'ra accepts as authority the practice of the 'good S'ūdra' (*sacchūdra*), apparently as a concession to the educated and pious member of the fourth *Varṇa*, bringing the extension under 'the practice of the good' (*ācāras'caiva sādhūnām*,) in the place of 'the practice of the strict Brahman' (*s'iṣṭācāra*). The animus against the learned S'ūdra was really due to abhorrence of Jains and Buddhists for their abjuring the Veda and for their wholesale invitation to the S'ūdras to desert their occupations and become monks. With the fall of Buddhism there was a marked reduction of acerbity even towards the Buddhist.

To begin with, we may note the widening of the rules regarding allowable occupation and areas of habitation for the follower of *Dharma*. It will amuse a modern student if a list of "excluded areas" is made. S'ankha-Likhita excluded Sindh and Magadha. The *Mahābhārata* excluded the Punjab. Paiṭhīnasi included Orissa by special mention. South India was excluded virtually by all authorities, and the Aryan area meant only the western half of the present United Provinces. The acceptance of two principles, *viz.* (1) that the country is 'sacred' over which the black antelope roams (*kṛṣṇamṛga*), barely (*yava*) is cultivated, and the *kus'a* grass grows, and (2) that any area in which there is a holy place (*tīrtha*), or through which a sacred river passes, is unobjectionable, along with the definition of *Ārya* as he who accepts the caste-classification, and the Aryan land as that in which *Varṇās'ramadharma* prevails, and the application of the rule of necessity (*āpad-dharma*)

to condone travelling to prohibited areas, brought the whole of India, and even far-off countries like Cambodia, Bali and Java within the ambit of permitted areas. Indian maritime activity and colonisation would have been impossible, without open breach of *Dharma*, but for the elastic provisions.

Next comes the principle of *Yuga-dharma*, 'the Dharma of Time-cycles,' which was interpreted so as to secure a relaxation in the interests of weaker sex or status. Under this principle, women and S'ūdras can get the same merit (*puṇya*) as men and Brahmans by adopting easier rites. Certain forms of easy literature are opened to them.

Their non-investiture (*upanayana*) was to be viewed as an exemption and a privilege. The wife received the same power (*adhikāra*) as the husband, without his *saṁskāras*, by mere fact of marriage. The principle that a taint was acquired by mere contiguity or association was attenuated till it meant only a lapse through the closest association or actual commission of an offence. The very young and the very old were exempted from many obligatory duties or expiatory rites. The circumstances in which impurity from contact (*aspṛs'ya*) will *not* arise are made more numerous. Religious cults like those of *bhaktimārga* and *tantra* and the spread of monistic (*A-dvaita*) philosophy tended to extend both the area and the circle of recognised usage to persons and places accepting their ideas or produced indifference to strict conformity to prescribed conduct. Their influence helped to make things easier for women and the unregenerate castes, and to substitute faith and intuitive knowledge for rites of expiation, and "good works" and 'self-realization' for ceremonial. But the substitution was

not effected without struggles with the adherents of *smṛti* (*e.g.*, case of Vaiṣṇava and S'aiva saints).

In the history of the Indian law of person and property, there is abundant evidence of diversity of view leading to progress. An impulse to change the law was justified on the ground of conscience (*ātmanastuṣṭi*) and the desire to vindicate *Dharma*. Reform in law or usage is not barred, if the move to change is justified on these grounds. In the field of civil law the main changes which follow are in the direction of the emancipation of the individual and his gains of learning (*cf.* the way in which the freeing of the 'earnings of the camp,' *castrense peculium*, from *patria potestas* paved the way for individualisation of property in Roman law), the reduction in the number of forms of marriage to suit the new conscience (*i.e.*, giving up forms like *āsura*, *rākṣasa* and *gāndharva* unions, which are but abduction, rape and seduction), the elaboration of the principle of adoption, and improvement in the civil status and rights of women.

The care of the dependant or destitute woman was then as great as social problem as the unemployed today. At first she was a charge on her family ; next the obligation to maintain her was extended also to the clan or sept (*kula*) and ultimately to the state. Kauṭilya's recommendation of the provision of work-houses for women will be remembered, as well as his making male relations responsible for the maintenance of their help-less female dependants. The spirit of consideration for the weak, which is a feature of *Dharma*, is conspicuous in its operation on woman's rights. From mere right of maintenance to her right to inherit is a big advance, but it was already implicit in the *Dharma* attitude. If Āpastamba could assert

that by marriage a wife gains the right to a moiety of her husband's spiritual merit (*puṇya*) and to none of his sins, the spirit is akin to that of *Bṛhaspati*, who pleads vehemently for the right of the childless widow to inherit her husband's estate in preference to agnates: "The wife is recognised by the Veda, the Smṛti, the world and men of integrity and virtue as half the husband's person, and his partner in spiritual benefit. The death of the husband destroys only one-half of his person; the other half survives in the widow. So long as she lives, how can any other person take the dead man's estate?" The right of the unmarried daughter to the expenses of her marriage was secured. In times of commotion, the weak require protection more than the strong. To a grown-up and fatherless woman, a husband is the natural protector. Marriage becomes an obligation to women, and is treated as a sacrament. It is invested with further attractions. The reaction against Buddhism and Jainism led to an emphasis on marriage, apart from questions of economic statemanship advocating population to make up the wastage of man-power in war, as these religions admitted women as nuns. But it is not necessary to cite Buddhist influence (as done by Dr. Jayaswal) to explain the recognition of the spiritual equality of the sexes in Hindu *Dharma*. It was there already. The indissolubility of the marriage tie, in later law, cancelling the older permission for separation and divorce, is perhaps due to the fear of the encroachment of Buddhism on the family, by attracting wives to nunneries. The emphatic condemnation of prolonged celibacy and the advocacy of the house-holder's status, may be due to the reaction against a glorification of renunciation (*saṁnyāsa*) for women as well as for men. The medieval *Hindu* revivals, sanctifying pious works, are responsible for the attempts in digests (*e.g.*, *Smṛticandrikā* and *Vyavahāramayūkha*) to extend

the widow's powers of alienation of property in which she has only a life-interest. When divorce had been universally denied to high-cast women, it was permitted, (as Kauṭilya did it) to Non-brahmanas; it was saved for the fourth caste, by Kamalākara. The marriage of widows, is similarly limited, and then denied. Even virgin widows, to whom leniency had been formerly shown, cannot now remarry, for Devaṇṇa Bhaṭṭa and Mādhavācārya explain away Parāśara's permission as barred by the inhibitions of the Kali age (*kalivarjya*). The time when a 'defender of the faith' like Candragupta II married, like Henry VIII, his brother's widow, without outraging orthodox sentiment, was forgotten. The gradual reduction of the levirate (*niyoga*), from permission to raise many off-spring to the raising of only one son to carry on the line, and then to positive prohibition, apparently on grounds of abuse by temptation springing from sex-impulse of the desire to retain property (definitely condemned by Vasiṣṭha), till its disappearance after the sixth century A.D., are to be noted on the debit side. But there is positive gain in two directions. Hypergamous unions (*asavarṇāvivāha*) are prohibited as *Kalivarjya*, and the inhibition was a discouragement of polygamy, already falling through public opinion into desuetude, except in royal families. The growth of orthodox opposition to self-immolation of the widow (*sahamaraṇa*) was a second gain. Not only did an old jurist like Viṣṇu commend *Sati*, but there is Greek evidence, for its practice. The citation of Vedic authority for it, as for another famous exception to the rule against suicide (*ātmahatyā*), is explained away by Medhātithi as analogous to that of black magic, which though found in a Veda, is still unacceptable to the good, and by Devaṇṇa Bhaṭṭa as an *inferior Dharma*. Bāṇa naturally denounced it. Tantric influence, which ennobled woman's body, went also against it.

It was interdicted to expectant mothers and to Brahman women. The later attempts to annul the prohibition (as by Mādhavācārya and the Bhaṭṭas) is a reaction due to the same aristocratic feeling which made it survive in Rājputana, and which led to holocausts like those of Gāṅgeyadeva (d. 1041), who was burnt with his hundred wives, or similar horrors in later Rajput and Sikh history. As an institution *Sati* was doomed long before it was legally prohibited in the 19th century.

In two respects there was hardening of the old rules : *viz.*, the readmission to caste privileges of apostates who desired reconversion, and the rehabilitation of the abducted or ravished woman. As regards the latter, there had been a general safeguard against the offences in the Hindu epochs in the law prohibiting the enslavement and ravishing of even slave women by their owners, and of wet-nurses by their employers (Kātyāyana). The abduction of women of respectable families was a graver crime, and the offence was punished with death, (Vasiṣṭha). The offender was included under a special class of criminals (*ātatāyinaḥ*) who could be slain by any one when caught *in delicto.* Unchastity in a wife did not entail the forfeiture of a right to maintenance, and there were easy penances for the offence. The case of one who had been abducted and forced into conjugal relationship or into an alien religion was ostensibly stronger. Vasiṣṭha, Atri and Parāśara allow women to be reinstated in such cases after undergoing purificatory rites. Opinion was divided on the question of the readmissibility of a woman who had conceived during abduction, but Devala declared that she should be taken back after she gave birth to the child, which was to be separated from the mother to avoid caste-mixture (*varṇasaṁkara*). Vijñāneśvara, who is later than

Devala, and lived at the beginning of the period of Musalman occupation, will not admit her to full rights, but will give her only a *locus penitentiae* in her husband's house. Her treatment becomes ungenerous during the period of Musalman rule, when it should have been otherwise. The rigor was extended to ordinary unchastity in woman, which was naturally worse, being voluntary. (*Caturviṁśatimata*; Aparārka). This attitude shocked Al Beruni. A man who had been taken a prisoner of war and converted to a *mleccha* religion, and had even associated with *mleccha* women, might be taken back after purificatory rites, according to Devala. Cases of even persons who had willingly gone over to the *mleccha* side were to be considered with sympathy. This was in harmony with the old Vedic rule for the admission of the *vrātya* to Aryan privileges after a ceremony called *vrātya-stoma* had been performed. Who are *Vrātyas*? The conventional explanation was that persons born in the three higher castes who had neglected to undergo *upanayana*, or to perform Sāvitrī were *Vrātyas*. A recent writer has made out that the original *Vrātyas* were a powerful civilised community in Eastern India. The common tendency was to equate *Vrātyas*, *Mleccha* and *Yavana*. Vasiṣṭha, Manu and Yājñavalkya had forbidden association with them, intermarriage with them and their admission to Vedic instruction and to religious rites. But they could be purified by *Vrātyastoma* or by the performance of the *Aśvamedha* (Vasiṣṭha). The performance of the horse-sacrifice by so many kings of dubious caste in the "dark-ages" of our history might probably have been due to this helpful rule. The abduction of women and men, or their being carried into slavery as prisoners of war, must have been an ordinary incident in the Muhammadan epoch. Why should the attitude be stiffened against the rehabilitation of unfortunate

men and women, when their number was so large? Two reasons may be suggested: firstly, *whole-sale* readmission was viewed differently from isolated cases of readmission, because of the fear of society being swamped by such large-scale reconversion; secondly, the fear of retaliation, directed both against the reconverted persons and against those who made the reconversion. When the power of reprisal was in the hands of a distant enemy it was negligible. But when it lay in men ruling the country, and their religion made apostasy a capital offence, it was to be dreaded. It is noteworthy that S'ivāji readmitted to the Hindu fold his general (*Sarṇobat*) Netāji Pālkar, who for ten years was a Muslim in Afghanistan and had even married a Musalman lady, after being carried away and forcibly converted to Islam. One of the Nimbalkars had become a Muhammadan. S'ivāji had him taken back and even gave him a daughter in marriage. But when it came to his own case, S'ivāji, would take no risks, and conciliated public opinion. He cheerfully underwent expiatory ceremonies as a *vrātya*, then had his rite of initiation, long intermitted in his family, and was crowned as a *Kṣatriya* king only after these ceremonies had been gone through.

Enough has been said to show the wide-spread feeling in heads of society that social well-being depended on the maintenance, in its purity, of traditional rules, and that the extension of such rules to meet new situations had first to be sanctioned by interpretation made in strict conformity with the prescribed rules and methods of investigation. To a ruler the part of the science of *Dharma*, which was of the most concern was the *general* part, and not that section, labelled *Rājadharma*, which laid down the special duties of his station. *Ācāra*, purification, gifts, and propitiation were *directly*

relevant to his conception of the duties of his office as King. This is why so many treatises on branches, which are so different from what is popularly regarded as politics, were written either by kings, like Ballālasena, or at the instance of kings, like Hemādri's *Caturvargacintāmaṇi* or *Jayasimha-kalpadruma*. *We* may think that an Indian Rāja would have been attracted by what *we* feel attracted to, *viz*. *Rājanīti*, because it relates to polity. But, we should look at it from *his* standpoint. In an orthodox palace atmosphere, a prince will imbibe knowledge of the special duties of his future office (kingship) almost with his breath. He will not look for much inspiration or new knowledge of even court etiquette from books written by priests or paṇḍits. He would feel differently towards *civil law*, and the different departments of activity with which the remaining sections of *Dharmas'āstra* dealt. This attitude will explain *two* puzzling features of our *Dharma* and *Nīti* literature: *viz*. (1) the large *non-nīti* and *non-vyavahāra* content of *Nibandhas* written to order; and (2) the fewness, insipidity and unattractiveness of the special treatises on *Rājadharma* or *Rājanīti*, particularly when viewed in comparison with their most opulent rival. Among works on *Arthas'āstra*, the only one written by a first-rate statesman was the *Kauṭilīya-Arthas'āstra*; the others were written by paṇḍits, or composed by paṇḍits and fathered on kings (*e.g. Yuktikalpataru* of King Bhoja, and *Mānasollāsa* of King Somes'vara of Kalyāṇa). The baffling *S'ukranīti* is an exception, but its composite character, uncertain age and origin, and mixture of archaism in diction and doctrine with startling modern views, raise special problems of their own. Kāmandaka, Sōmadeva and Hemacandra were poets as well as paṇḍits. They wrote literary excercises, and aimed at pleasing, and not at contributions to political science. In the same way, the

handbooks on *Rājadharma*, in the restricted sense, with two exceptions, were composed by paṇḍits: *e.g. Rājadharma-prakaśa* of Mitramiśra, *Rājanītimayūkha* of Nīlakaṇṭha, and *Rājadharmakaustubha* of Anantadeva.

The two exceptions to the unattractiveness of the narrower *Rājadharma* literature are: (1) the *Rājadharma-kāṇḍa* of the *Kṛtyakalpataru* and (2) the *Rājanītiratnākara* of Caṇḍeśvara. The latter has been printed by Dr. K. P. Jayaswal and Dr. A. Bannerji Shastri and has recently passed into a second edition. The former is being edited by me, and will soon be published. Lakṣmīdhara's work is of importance from several standpoints. He was not only a great and austere Brahman, but he belonged to a family in which high office had descended from father to son. The highest office of his day was that of *Mahāsāndhivigrahika*, a combination of the cabinet duties of the modern ministers of war, foreign affairs, and home affairs. Lakṣmīdhara's father Hṛdayadhara held the office also in the Gāharwār court. Lakṣmīdhara mentions the admiration which his mastery of law and fact evoked, when he ' summed up ' as chief judge (*prāḍvivāka*), and his *finesse* as a minister. Apparently, he passed through the lower appointments before attaining the high office which he held when he wrote the *Kṛtyakalpataru* and for which he had to wait till his father vacated it. He was thus a grandee, an inference which is confirmed by his allusion to his many gifts to Brahmans and temples. He represented the flower of the Brahman official hierarchy in his age, unlike his two great contemporaries. Vijñānesvara was not an administrator, and Aparārka was not a Brahman and had also not seen affairs with an intimacy which only a minister can obtain. Caṇḍeśvara, who came nearly two centuries after Lakṣmīdhara, is

in many respects an "under-study" to Lakṣmīdhara, from whom he borrows extensively. He too was a nobleman (*Thakur*), a judge and a minister, as well as a scholar, and writer. But he was not a *s'rotriya* like his model, and he served in a small kingdom, unlike Lakṣmīdhara who served one of the powerful rulers of the time, Govindacandra of Kanauj (A D. 1104-1154), who, in the length of his reign, the extent of his territory, prowess as a soldier, and distinction as an administrator, vied with his elder contemporaries in the Dakhan and South India, Vikramāditya VI and Kulottunga I. We might justly expect from these two writers a combination of learning and experience in dealing with *Rājadharma*, in its narrower sense, which cannot be looked for in treatises of Mitramis'ra, Nīlakaṇṭha and Anantadeva. Mitramis'ra does not also need extended consideration, since he has borrowed whole-sale from Lakṣmīdhara in the most unblushing way.

To take the latter first. Nīlakaṇṭha's *Nītimayūkha* does not cite Lakṣmīdhara, and is unlike the *Kalpataru*, from which he does not borrow in this section of his *Bhagavanta Bhāskara*. It is a jejune compilation unworthy of its author's reputation, and seems to have been put together simply to round off the digest. It borrows its treatment of policy wholesale from Kāmandaka, the sections on omens and prognostications from Varāhamihira, and the section on war from both, besides using Purāṇic literature to some extent. There is no sense of reality behind his statements. His patron was a mere nobleman, and Nīlakaṇṭha himself had no political training. The only topics on which he shows some animation are (1) the discussion whether a non-kṣatriya can be crowned in the old way, a point which he tacitly answers in the affirmative by furnishing a long account of the coronation ceremony, with extracts from

the *Aitareya Brāhmaṇa*, and, (2) the consideration of the rule that a Brahman might be killed in self-defence. Nīlakaṇṭha takes the view that *motive* is insufficient, and that the Brahman must actually attempt murder, before he can be killed. He advocates the use of *kūṭa-yuddha*, or improper war in certain circumstances, a concession to the lowered moral standard of the day.

Anantadeva's book virtually exhausts itself in three large divisions: architecture, following the injunction that the king should have forts; a treatment of civil and criminal law in their eighteen titles, showing little depth or originality; and a long account of the coronation ceremonies, with a description of the ritual and the *mantras* to be used on the occasion. The book was probably a manual for a small court like that of his patron Bājā Bahadur Candra of Almora (d. 1678). His special individuality appears only in the following. He recognises a polygamous king, with a chief queen for ceremonial purposes, and the possibility of competition to the succession, from the existence of many sons by different mothers. He recommends primogeniture. The cabinet he envisages is a small one and consists of the Minister, the Chief Priest, the Chief Cook and the Astrologer. He attaches importance to the ceremony of coronation and rules that the title of King should be taken only after coronation. It is noteworthy that S'ivāji, from whose dominions Anantadeva's family came, followed this precept, and the official form of dating his reign begins after his coronation in 1674; though he had taken the title of Rājā and declared his independence ten years earlier (1664).

Mitramis'ra's book is redeemed by two features: its comprehensiveness, due largely to his absorption of virtually

the greater part of the work of Lakṣmīdhara; and his great learning, which enables him to add corroboration to what is given in his original. His patron Bīrsingh was given considerable freedom by Jahangir, and used his influence with the emperor to strengthen Hinduism. He was more than a petty ruler. It is possible that Mitramis'ra's book might have been designed for the guidance of the small kingdom, but the probability is that both the scholar and patron looked for a wider audience. The elaborate description of the coronation of S'ivāji, which we find in the *Citnis Bakhar* is almost word for word in accord with the rules laid down by Mitramis'ra, following Lakṣmīdhara, for the coronation of a king. Gāgā Bhaṭṭa (Vis'ves'vara Bhaṭṭa) who officiated as chief priest at the coronation, and received a lakh as his fee (*dakṣiṇā*) must have followed Mitramis'ra closely. It is also possible that Sawāi Jaisingh of Amber, the soldier-astronomer, who performed an *as'vamedha* and underwent a coronation in accordance with Hindu rites, followed this work. Mitramis'ra is a man of affairs, but still a man of his age. He discusses the question whether a ruler should be a kṣatriya only or a *consecrated* kṣatriya, and affirms the second alternative. His doctrines are strictly in accord with *Dharmas'āstra*. He advocates primogeniture and will not allow partition of a kingdom. His vigilance for the royal fisc is shown by an interpretation of the old rule that the king should make good property lost by theft, to the effect that the liability to the state will not arise where the loss is due to the carelessness of the owner. He shows some originality in the discussion of the theory of *Maṇḍala*, disagreeing with Kāmandaka in some respects, but it is all mere theory, as in the days of Akbar and Jahangir, there was no scope for foreign policy for a subject Rājā. The Brahmaṇa is permitted to fight

in certain emergencies. The duties of the conqueror *vis-a-vis* the conquered are in accord with tradition and high ethics, and derive some animation from the circumstance that a Hindu prince under the Mughal empire was in the position of a conquered ruler, and that the plea for generous treatment was part of the claim of the surviving Hindu Rājās, whom the Mughal administrators treated as *Zamindars.*

Caṇḍeśvara's *Rājanītiratnākara* was the work of an octogenarian. It has many points of originality. He hardly uses the work of Lakṣmīdhara, from whom he borrows wholesale in his other works; for, in spite of an acknowledgment of his obligation to the older writer, Candeśvara does not follow him either as regards his arrangement of topics, or his doctrine. He omits the treatment of various ceremonies prescribed by Lakṣmīdhara and other later writers for the propitiation of unseen powers. His work is more like the political testament of an old statesman, recording his opinion for the benefit of posterity. His own king was a Brahman and he himself was a Thakur. So, he rules that kings might be of *any* caste. He ignores the coronation ceremony, and attaches no special constitutional value to it. He recognises *de facto* sovereignty, and admits the legitimacy of the conqueror. To impress on the king his very limited scope for capricious action, he argues that the state is a society of all persons concerned, including the halt, the maimed, the helpless, and orphans, and that their interests will be sacrificed in a division of a kingdom. He thus just misses anticipating Burke's famous definition. He is by no means for royal absolutism, or for breach of *Dharma* by the king. No man of his age could be. He cites the famous text (anonymous) about the divine character of the people, as a set-off to the theory of the divinity of the king.

Though brief, Caṇḍeśvara's book displays originality, courage, and unconventionality. It was an after-thought, as he had completed his sketch of *Dharmaśāstra* in *seven* books, without the need to write specially of *king-craft.* He would probably not have written even this tract but for the importunity of his sovereign, Bhaveśa.

It only remains to describe the *Rājadharma-kalpataru,* which may be taken as the *locus classicus* of this type of literature, regarded whether by itself or in its relation to other parts of *Dharma* in the wider sense. Lakṣmīdhara's work is in 14 books. His omission of *vyavahāra* in the treatment of *Rājadharma* is part of an outlook which treated *all* parts of *Dharma* as *Rājadharma.* Its omission in Kāmandaka or *Mānasollasa* will be defect, unless the works are viewed as popular supplements to *Dharma*, devoid of any authority. One feature in Lakṣmīdhara is note-worthy. He will not cite any authority that is not recognised as a source of *Dharma.* He follows in the arrangement of his quotations the order of enumeration of the sources: *śruti, smṛti, itihāsa, purāṇa* and *caritra.* He assumes a good deal, of what he has said in other sections of his digest. To compile a work on polity by Lakṣmīdhara one would have to lay under contribution several sections of his digest; it cannot be written from his '*Rājadharma*' alone. Lakṣmīdhara held the responsible position of chief minister to a king, whose power was daily growing, and yet who had to be educated in Hindu *Dharma.* It is therefore natural that, as in Kauṭilya's work, he should feel the need to deal with the problems of philosophy and religion, along with administrative organization, recruitment to the king's service, court ceremonial (important in a new dynasty, without tradition),

as well as economic devolopment of a large area, just recovering from war, along with traditional treatment of the rules of taxation and economy, and the beneficial relations of the ruler and the ruled. His special " advance " on the *Kauṭilīya* is his elaboration of the magical and ceremonial rites recommended for the safety of king and kingdom. His reticence about foreign relations of the king is noteworthy, but the omission of the *Maṇḍala* theory is apparently the caution of the political minister, who will not give himself away. The Gāharwār king must have been proud of his *kṣatriya* lineage, which was questioned. It is proof of Lakṣmīdhara's independence that the rites which he prescribes for the coronation of even a Rajput king are Puāṇic and not Vedic. In this respect he is more consistent than his successors, who indiscriminately mixed up the two, for kings whose claim to be kṣatriyas was even more questionable than Govindacandra's. His magnifying the Brahman is consistent with himself and the tradition of the age. In one respect, he strikes an original note. While he will not countenance the use of deception or barbarism in war, he regards it as a game which should be short and sharp; and he accordingly recommends that the civil population of the enemy should enjoy no immunity from attack or destruction of property, as the aim of war is to put the maximum amount of pressure on the enemy and bring him to his keens quickly. He accordingly advises the laying waste of the enemy's territory, and the destruction of the enemy's buildings, water reservoirs, and bridges. But, once an enemy is overcome, the enemy subjects should receive the same considerate treatment as the subjects of the conqueror. Private looting is forbidden in war, and all booty belongs to the king. In civil government, the main principles of Lakṣmīdhara are economy, avoidance of waste, conservation of

resources and respect for the expert. Its modern-ness is what one would expect from a responsible and gifted statesman with great experience in governing a large kingdom. That the man of affairs was also a great Brahman was in conformity with a tradition, which refused to divide the functions of life, or accept any suggestion which would view mundane existence as the only one.

A result of the revived interest in legal texts and *Arthaśāstra* in recent years has been a partial redemption of the reputation of Indians for realism and progressive instincts. But there still lurks a belief that religion and *Dharmaśāstra* strangled the free growth of legal and political institutions, made for inelasticity, and rendered society unable and unfit to readjust itself to changing conditions and needs. The claim of the old Indian norm (*Dharma*) to be viewed as eternal, infallible and indisputable has been represented as a confession of the want of both the desire and the capacity to move forward. Evidence of such adjustments must force itself on the notice of students of our social history and institutions. It will show that, inspite of the fossilising effect of the norm, the liberal use of fictions enabled some readjustment to be effected. The entire area of a vast literature, which was the creation of religious fervour and an overpowering sense of duty in centuries of kings and thinkers, cannot be summarily condemned as the dismal outpourings of minds in fetters to priest-craft and superstition. Explanations, so facile and so appropriate in a superficial consideration of fragments of a great literature, cannot explain the continued vitality of the culture, and the religious beliefs on which it was based, through centuries of vicissitudes, like foreign invasions, conquest, and wholesale persecution, the like of which

has extinguished civilization in other lands. That a frequently ravaged society was able to maintain its essential unity and cherished ideals and modes of life, through such calamities and through such a long stretch of time, adapting itself, within the limits of its fundamental beliefs, to the calls of altered needs, and that it ensured to its members a considerable degree of happiness and freedom, with the temper to make use of them, are claims which may be urged on behalf of the great body of tradition and literature called *Dharmaśāstra*. That a study of its scope, aims and implications, along with that of the ways in which it renewed itself from age to age, may prove of use not only to those who accept it without question, but even to those who ardently wish for social change in the interests of wider well-being, among a vast population in which a great many persons have still the faith in it which will help them more readily to accept change if it is in consonance with tried ideals and methods, is the justification for the review which has been attempted in these lectures of what, from its vital bearing on the prosperity of the land, I have, consistently with tradition, to all *Rājadharma*.

NOTES

[The figures at the head of the Notes refer to the pages and lines of the text of the lectures, while the figures on the top of Notes refer to the serial numbers of the Notes, which are given for convenience of cross-reference.]

1

1, *last line*. STUDY OF ANCIENT INDIAN CULTURE

The first Chair on the subject was founded by the late Mahārāja Maṇīndracandra Nandi of Cossimbazar. Recently, H. H. the Mahārāja of Baroda has given the University a perpetual grant for the foundation of a Professorship in Ancient Indian Culture and some Fellowships. At Benares candidates can study the subject in all its ramifications from the pass B.A. course to the M.A. and D. Litt. degrees.

2, *l*. 9

The convention which was set up when the Chair at Madras University was first filled has been maintained with the widening activities of the Department of Indian History. Research more than teaching forms the chief occupation of the staff.

3, *ll*. 15-16

At Bombay the School of Sociology has produced some useful doctoral theses on Indian Polity and Sociology, marked by scholarship and insight.

2

4, *line* 23. RĀJADHARMA

The term *Rājadharma* is now popularly used in the sense of Polity or *Rājanīti*. It has been so especially since the study of

Ancient Polity was stimulated, if not actually commenced, by the publication in 1909 of Kauṭilya's *Arthaśāstra* and its translation into English. Lawyers have all along been pre-occupied, since the foundation of British Courts of justice in India, with that part of *Vyavahāra* which deals with inheritance and partition of heritage (*Dāyabhāga*). There has been a belief, which is not justified by Indian tradition, that, as the Hindu king was invested with the duty of adjudicating suits of law, the Vyavahāra content of *Dharmaśāstra*, and the special rules for the kings and courts alone constitute *Rājadharma*. The chief purpose of these lectures is to correct the impressions, to show that they are not in consonance with the traditional view of Hindu life or institutions, and to draw attention to the wider implications of the term.

3

5. The Lecturer's Works

Ancient Indian Polity was published in 1914, and a second edition appeared in 1934. *Ancient Indian Economic Thought* appeared at Benares in 1935. The Calcutta Readership lectures were named *Indian Cameralism*, from striking points of resemblance with European Cameralism and the *Arthaśāstra*. Though delivered in 1934, it has yet to be published.

4

6. Use of the Kauṭilīya in Modern Politics

Half in fun and half seriously, European administrators have cited the precepts of Kauṭilya in legislative debates in support of new taxes and the Criminal Intelligence Department.

5

7, *ll.* 29-30. Dharmaśāstra as Priestly Twaddle

The Gṛhya-sūtras, which form part of the *Dharmaśāstra*, have been characterised by a hostile critic as 'not only twaddle, but priestly

twaddle.' Many of the misconceptions of the nature and content of *Dharmaśāstra* may be traced to the criticisms of Sir Henry Maine, made on the basis of the translation of *Manusmṛti* by Sir William Jones, and in ignorance of Sanskrit, and almost a contempt for it.

Some illustrative passages may be cited :

" The religious oligarchies of Asia, either for their own guidance, or for the relief of their memory, or for the instruction of their disciples, seem in all cases to have ultimately embodied their legal learning in a code; but the opportunity for increasing and consolidating their influence was probably too tempting to be resisted. Their complete monopoly of legal knowledge appears to have enabled them to put off on the world, not so much of the rules actually observed as of the rules which the priestly order considered proper to be observed. The Hindoo Code, called the Laws of Manu, which is certainly a Brahman compilation, undoubtedly enshrines many genuine observances of the Hindoo race, but the opinion of the best contemporary orientalists is, that it does not, as a whole represent a set of rules actually administered in Hindustan. It is, in great part, an ideal picture of that which, in the view of the Brahmins, *ought* to be the law. It is consistent with human nature and with the special motives of their authors that Codes like that of Manu should pretend to the highest antiquity and claim to have emanated in their present form from the Deity. Manu, according to Hindoo mythology, is an emanation from the Supreme God ; but the compilation which bears his name, though its exact date is not easily discovered, is, in point of the relative progress of Hindoo jurisprudence, a recent production." (*Ancient Law*, ed. Pollock, 1927, pp. 15-16. The work was published in 1861).

" Hindoo law, which I have placed by the side of Roman law, calls assuredly for no euology. It is full of monstrous iniquities, and has been perverted in all directions by priestly influence. But then a great deal of it is of prodigious antiquity, and, what is more important, we can see this ancient law in operation before our eyes. British legislation has corrected some of its excesses, but its

principles are untouched, and are still left to produce some of their results." (*Early History of Institutions*, 1874, p. 309).

6

8, *ll.* 1-7. Small Content of Law and Polity in Dharmaśāstra

In *Manusmṛti* only three books, *viz.* the seventh, eighth and the ninth treat of politics and law proper, and take up about 980 verses against 1580 for the rest. In *Yājñavalkyasmṛti*, the last (*i.e.* 13th *adhikaraṇa*) of the first book, and the whole of the second deal with polity and law, and take up 367 verses out of the total 1009. In the reconstructed *Bṛhaspati-smṛti*, I have gathered 1288 verses (including some half-ślokas) on law and and polity, as against 1037 on the rest of the normal content of *Dharmaśāstra*. As Bṛhaspati's work concentrates on *Vyavahāra*, the large content of non-vyavahāra element in it is noteworthy. *Parāśarasmṛti*, as is well known, has no *Vyavahāra* or *Rājadharma* content, while the extant *Nāradsmṛti* is equally exceptional in having virtually only a *vyavahāra* element, which is noticeably very small in the *Dharma-sūtra* literature, being relatively most abundant, while still relatively smaller than the non-vyavahāra element in *Viṣnusmṛti* the only *smṛti* in *sūtra* form which has relatively a large *vyavahāra* content.

If we turn to the nibandhakāras, we find that only two out of the fourteen books of the *Kalpataru* of Lakṣmīdhara are devoted to Rājanīti and Vyavahāra. Jīmūtavāhana's *Dāyabhāga* was exclusively devoted to a part of vyavahāra, as his *Vyavahāra-mātṛkā* was also, but he recognised the value of the non-vyavahāra element by writing a much larger work on Kālanirṇaya, (*i.e.* the *Kālaviveka*, Bibliotheca Indica, 1905). His lost *Dharmaratna*, of which both the *Kālaviveka* and the *Dāyabhāga* are declared in their colophons to be parts, will if recovered furnish another illustration of the principle enunciated. (Kane, *History of Dharmaśāstra*, p. 319). Of the twenty-eight *tattvas* of Raghunandana only two (*viz.* on

dāya and *vyavahāra*) bear on law proper. Every large and complete digest will furnish similar instances.

7

8, *ll.* 28-30. HALHED'S CODE

The original of N. B. Halhed's *Gentoo Code*, published in 1776, was a Persian translation of the *Vivādārṇavasetu* (Bridge over the Ocean of Litigation) which was composed by a committee of *smārtas* named in the following śloka, which appears at the end of the printed edition of the work :

Bāleśvara-Kṛpārāma-Sāma-Gopāla-Kṛṣṇajīvanākhyaiḥ |
Vīreśvara-Kṛṣṇacandra-Śrī-Gaurīkāntābhidhānaiḥ ṣadbhiḥ ||
Kālaśaṅkara-Śyāmasundra-Kṛṣṇakeśava-saṃgaiḥ |
Sītārāmasaṅgaiśca kṛto granthaḥ sphuratu sabhāyam ||

There is no mention of the Mahārāja Ranjit Singh of Lahore, to whose inspiration the publisher attributed this work. The Oriental Manuscripts Library at Madras has a copy of this work with the title *Vivādārṇava-bhañjana.* It should not be confused with Jagannatha's famous digest, which H. T. Colebrooke translated in 1798. The title of the latter, which is still unpublished, is *Vivāda-bhaṅgārṇava.*

8

9, *l.* 2. COLEBROOKE'S DIGEST

This famous work, which has been extensively used by the British courts was published first in 1797 by H. T. Colebrooke. It is a translation of the sections on contract and succession of a digest specially composed by Jagannātha Tarkapañcānana of Triveṇi on the Ganges in 1796. Jagannātha is the last great *nibandhakāra.* He is said to have died at the great age of 111 in 1806. If it be so, he must have been a centenarian when the digest was composed, a

truly remarkable achievement. (B. Banerjee, *Dawn of New India*, 1927, pp. 81-91).

9

9, *First Paragraph.* EARLY ENGLISH TRANSLATIONS OF DHARMAŚĀSTRA AND WORKS ON HINDU LAW

Sir William Jones translated *Manusmṛti* following Kullūka's commentary, and an edition was published in 1796, after his death. He was responsible for the suggestion to undertake a comprehensive digest, and the *Vivādasārārṇava* of Trivedi Sarvoruśarman was composed accordingly in 1789. Meantime, the *Vivādārṇavasetu* had been compiled in 1773, and was the original of Halhed's *Code of Gentoo Laws*, 1776, published in 1781. Jagannatha's *nibandha* was partially translated as 'Digest of Hindu Law' by T. E. Colebrooke, in 1797. Colebrooke published in 1810 his translations of Jīmūtavāhana's *Dāyabhāga* and the *Dāyabhāga* section of the *Mitākṣarā*. Borradaile's translation of the *Vyavahāramayūkha* appeared in 1827. The *Dāyakramasaṁgraha* was translated by P. M. Wynch in 1818. It was by Śrī Kṛṣṇa Tarkālaṅkāra, and an edition of it was published in 1828. The *Dattaka-mīmāṁsā* of Nandapaṇḍita and the *Dattaka-candrikā* of Kubera was published by J. C. C. Sutherland in 1821. Sir Thomas Strange published his *Hindu Law* in 1825. In 1829 appeared Sir William Hay Macnaghten's 'Principles and Precedents of Hindu Law' in the same year as his father Sir Francis Macnaghten's *Considerations on Hindu Law*. Goldstücker wrote his *Present Administration of Hindu Law*, in 1871. Meantime, A. C. Burnell had published a translation of the *Dāyabhāga* section of Mādhava's *bhāṣya* on *Parāśarasmṛti* in 1868, which he followed up by a translation of the same section of Varadarāja's *Vyavahāranirṇaya*, which I am about to publish for the first time. Vācaspati Miśra's *Vivāda-cintāmaṇi* was translated in 1865 by P. C. Tagore, and the sections on inheritance in the *Smṛticandrikā* were translated by T. Krishna-swami Aiyar in 1867. In 1868 Ṗrọsonno Coomar Ṭagore left by

will the funds for the foundation of the famous Tagore Law Professorship in the University of Calcutta, and H. Cowell gave in 1870 the first course of lectures under this foundation, and chose Hindu Law as his subject.

10

10, *ll.* 8-10. JĪMŪTAVĀHANA'S INTEREST IN NON-VYAVAHĀRA

The colophon to the *Dāyabhāga*, the most famous work of Jīmūtavāhana, ends thus "*Dharmaratne Dāyabhāgaḥ samāptaḥ*" The same reference to *Dharmaratna* occurs in the colophon to his *Kālaviveka* (Bibliotheca Indica, 1905). The last words in the *Kālaviveka* "*Samāptaṁ cedam Bhūratne Dharmaratnam*" will indicate that this section was the last in the *Dharmaratna*. The complimentary verse at the end of the section refers to the bigger work and its occurence at the end of *Kālaviveka* will also suggest that the *Dharmaratna* terminated with the section of *Kāla* :

Bahuvidha-vivāda-timiragrastam grahaṇam raveḥ
s'as'āṅkasya ।
Tad-dharmaratnadīpālokāt sakalam vilokayatā ॥

His *Vyavahāramātṛka*, which was published by Sir Asutosh Mookerjee in 1912, does not show this reference to *Dharmaratna* in the colophon, which ends thus :

Iti Pūribhadra Mahāmahopādhyāya S'ri Jīmptavāhana-kṛta Vyavahāramātṛkā samāptā. It is possible that the other sections of the *Dharmaratna* were never written, though planned.

11

10, *ll.* 10-11. MĀDHAVĀCĀRYA'S KĀLAVIVEKA OR KĀLANIRṆAYA

The reason given by Mādhavācārya for selecting *Parās'ara-smṛti* for comment is that Parās'ara's work was the most

resplendant among *smṛti* (*Smṛti-suṣamā-parāśaraḥ*) and it was not commented on by any previous writer:

Parāśarasmṛtiḥ pūrvair na vyākhyātā nibandhṛbiḥ |
Mayāto Mādhavāryeṇa tad-vyākhyāyām prayatyate. ||

As this *smṛti* does not treat of *kāla*, just as it did not treat of *vyavahāra* and *rājadharma*, Mādhava seems to have felt the need to write a separate treatise on *kāla*, as he could not fasten one on a verse in the original, as he did his disquisition on law and government. His action shows how he felt that the treatment of these topics, which were omitted by Parāśara, were needed to round off the nibandha.

12

10, *ll.* 14-16. Mixture of Spiritual and Secular Punishments in the Hindu Criminal Code

The connection between sin and crime is shown by the view that they are identical, every crime being an offence against God and therefore a sin, and every sin, in primitive society atleast, being an offence against the order established along with the state, and therefore punishable by the state. Sir Henry Maine pointed out in 1861 (*Ancient Law*, ed. Pollock, p. 381) that primitive jurisprudence knows both sins and torts. "Of the Teutonic codes, it is almost unnecessary to make this assertion, because those codes in the form in which we have received them, were compiled or recast by Christian legislators. But it is also true that non-Christian bodies of archaic law entail penal consequences on certain classes of acts, and on certain classes of omissions, as being violation of divine descriptions and commands." The sinful nature of crimes was known to Europe, and is shown by the post-mortuary punishments for some classes of crime, like violent robbery, and suicide, by refusal of Christian burial. The Church's refusal of absolution for certain offences is noteworthy.

The relation between spiritual and worldly punishments is explained at some length by J. Jolly, *Hindu Law and Custom*, pp. 250-270. It is worth studying. *Viṣṇusmṛti*, 33-42, gives an elaborate catalogue of sins (*pātaka*), which the king should punish (*ib.* pp. 250-252.) For an offence there is expiation in two ways, by undergoing punishment at the hands of the king, as *punishment purifies* (*Manusmṛti*, VIII, 318) and by performing the prescribed penances, except in cases for which no penance can be prescribed, owing to their moral gravity. Expulsion from society (*tyāga*) corresponds to excommunication, *i.e.* out-casting. "In all the *smṛtis* an elaborate admixture of spiritual and worldly punishments is in evidence." (*ib.* p. 263) Penance as well as punishment was prescribed for almost all crimes. (*ib.* pp. 267-268.) It should be noted that the power of the king as the wielder of the 'rod of punishment' and of the community in arranging for readmission after penance, meant a capacity, by refusal of penance or punishment, to make the culpability continue in future lives, *i.e.* after death. A careful calculation of the effects of a punishment of this combined nature in the case of apparently preferentially treated persons, like Brāhmaṇas, might show that what appears, in a sceptical age as immunity or special consideration, is in reality a relatively heavy load for the class of apparently exempted offenders.

13

11, *ll.* 5-11. BRĀHMAṆA IMMUNITIES

"Kauṭilya believes in the immunities of Brahmans in several matters, frees them generally from corporal punishment, only providing that they be branded, or imprisoned in cases of *serious* crime, exempts their property from escheat and from forced contributions, and even provides for their receiving substantial largesses from the King, in cases where an innocent man has been punished. In these, he is like Manu, though he does not go to the lengths to which Manu would proceed in giving such privileges and immunities. But, Kauṭilya would apparently not except even

Brahmans from the law against suicide, while, in cases of their committing treason he would have them drowned, and he would also allow the Brahman to be killed on the battlefield or in self-defence" (*Ancient Indian Polity*, pp. 33-34. In II, i of the *Arthaśāstra* fines are prescribed to those, who, though able to do so, do not support (*a-bibhrataḥ śaktimato*) a number of named dependants like children, wife, parents, brothers under age, and sisters who are unmarried or have been widowed, but it is expressly stated that this injunction will not apply to claims for maintenance from these if they are out-castes or apostates (*anyatra patitebhyaḥ*), but an exception to the saving clause is in favor of the mother (*anyatra mātuḥ*). In the *Śukranīti* (IV, i, *ll.* 194-92) occurs a long catalogue of persons whom the king is enjoined to punish, and among them are the atheist (*nāstikaḥ*) and the blasphemer (*Deva-dūṣakaḥ*). Mahāmahopādhyāya R. Shama Śastri has misunderstood the rule, and states that the failure of the mother and the apostate to maintain their dependants is not punishable!

14

11, *ll.* 13-21. ALLEGED SECULAR NATURE OF ARTHAŚĀSTRA

See pp. 38-40, *Ancient Indian Polity*, where many instances are cited to show the sacerdotalism of the *Arthaśāstra* of Kauṭilya, the most illustrious of its class, from the standpoint of *Dharmaśāstra*.

According to the *Caraṇavyūha* of Śaunaka, *Arthaśāstra* is an Upa-Veda of Atharva-veda. The Atharva Veda is recognised as one of the four Vedas, which form the fourteen sources (*sthānāni*) of Dharma in Yājñavalkya, I, 3. As Aparārka points out, if the number fourteen was not specified, and the Vedas were mentioned as *Trayī*, the Atharva-Veda would have lost its place as a source (p. 6: *Caturdaśa grahaṇādṛte Atharva-veda-saṃgraho na syāt.*) The enumeration of another four, to make up eighteen "sources," by *Viṣṇupurāṇa* is dismissed by Aparārka with the observation that it catalogues the sources of *vidyā* not *dharma*.

In the four *Arthas'āstra* is named last. The *Arthas'āstra* is also included in *Itihāsa-purāṇa*, thus bringing it into the canon of Dharma. The authors of *Dharma-pradīpa* have erred in suggesting that *Arthas'āstra* is of an canonical authority, and that therefore the dictum '*Rājā kālasya kāraṇam*' being an *Arthas'āstra* dictum (!) should not be accepted, (p. 15). The sentence occurs in a famous passage in the *Mahābhārata*, to which *Dharmapradīpa* will not deny validity.

Manu denied the right to expound or study the *Dharmas'āstra* to non-Brāhmaṇas (II, 16-17):

Niṣekādi smas'ānānto mantraiḥ yasyodito vidhiḥ |
Tasya s'āstre adhikārosmin jñeyo nānyasya karhicit ||
Viduṣā brāhmaṇena idam adhyētavyam prayatnataḥ |
S'iṣyebhyasca pravaktavyam samyak nānyena kenacit ||

The *Chāndogya Upaniṣad* (III, iv, 1-3,) equates *Itihāsa-Purāṇa* with the Atharva-veda, but they are open (according to S'ankara, *Vedānta-sūtras*, XXXIV, S.B.E., p. 229,) to all four castes.

15

12, *l*, 7 *ff*. Toleration of Heresy and Heterodoxy

Three inscriptions of As'oka in the Barābar hill show that in the thirteenth and twentieth years of his reign he bestowed the rock-cut caves to the heretical Brāhmaṇa sect of the Ājīvakas. (Smith, *As'oka*, p. 144, ed. 1901). The Vahiyakā inscription of his grandson Das'aratha states that immediately after his accession he bestowed "on the venerable Ājīvakas" the cave "to be a dwelling place for them as long as the sun and the moon endure." (*ib.* p. 145).

The Ājīvakas are known only from their rivals the Jains and the Buddhists. Gos'ala Mankaliputta, the contemporary of Mahāvīra and at one time his follower, is said to have led the Ājīvakas at the time. They seem to have held that the soul had color (Radhakrishna, *Indian Philosophy*, I, 1940, p. 292n) and also the atomic hypothesis (*ibid.*, II, 194n).

Manusmṛti (IV, 61) refers to *pāṣaṇḍi gaṇa* (association of heretics). Yājñavalkya, II, 192 provides for the maintenance of the regulations of their guilds:

> *S'reṇī-naigama-pūṣaṇḍi-gaṇānāmapyayaṁ vidhīḥ* ।
> *Bhedam caiṣām nṛpo rakṣet, pūrvavṛttim ca pālayan* ॥

Nārada and Kātyāyana repeat the rule (vide my *Ancient Indian Economic Thought*, 1934, p. 184 where their words are cited). Medhātithi (on *Manu*, IV, 30), Vijñānesvara (II, 192) and Kullūka on *Manu*, (IV, 30) define the *pāṣaṇḍa* as one who rejects the Veda, and so the Buddhists and Jains were also brought into the category. It is possible that the reference in Manu is to monasteries of Buddhists and Jains. The audience to petitioners precedes the inquiry by the king into their affairs. Kauṭilya (p. 39) advises the king to deal personally with the affairs of gods, heretics, learned Brāhmaṇas, cattle, sacred places, minors, the aged, the afflicted, the helpless and women, in the order of enumeration.

> *Tasmād devatās'rama-pāṣaṇḍa-s'rotriya - pas'u - puṇyasthānānāṁ bāla vṛddha-vyādhita-vyasanyanāthānām strīṇāṁ ca krameṇa kāryāṇi pas'yet.*

For the king's studies see *Ancient Indian Polity*, p. 39, note 63.

16

13, *ll.* 4-9. Differentiation between Secular and Religious Law

The *Arthas'āstra* distinguishes the courts as *Dharmasthīya* and *Kanṭakas'odhana*, and the third and fourth books of the *Kauṭilīya* are devoted to them. In regard to the treatment of subjects, there is little difference between Kauṭilya and the *smṛtis*, and it may be therefore assumed that he followed only the *Dharmas'āstra*. The differences between him and Yājñavalkya are for instance inconsiderable. The *Dharmasthīya* courts dealt not only with the civil matters included in the usual "eigteen titles of law," but also *sāhasam* (violent crime) and assault (*daṇḍa-pāruṣya*). Theft

had a great extension given to it by construction, so as to include abduction, on the principle that it is the theft of a human being, (*Manu*, VIII, 317) cheating in trade, (*Yājñavalkya*, II, 257) substitution of an article in deposit (*ib.* 246-247), and combinations of traders to raise prices (held again to be deceitful, *ib.* 249-250). The *Kanṭakaśodhana* courts dealt with such civil matters as the affairs of artisans, labourers and merchants, and offences against police regulations such as those relating to postitutes. Capital punishment cases came under them, as did all police and magisterial enquiries and investigations. It is clear that roughly the difference was that between the courts of a judge and a magistrate in British India today. The differentiation was not made on the ground of secularity or religion, (vide, Jayaswal, *Manu and Yājñavalkya*, pp. 116-7) and V. R. Ramachandra Dikshiter, *Mauryan Polity* pp. 160-164.

Not only therefore is there no clear distinction between religious and secular law, which in the circumstances we can not expect, but the lines of demarcation between crime and civil wrong is not clear. In most crimes, the offender has not only to undergo punishment by fine etc. but he incurs the liability to pay to the injured party due compensation. The underlying idea is that they are not public offences but private injuries. Offences against the spirit of religion take the place of grave crimes against the state. This is the ground of the serious view taken of adultery and offences against women. The original punishment for adultery had been death, but Kauṭilya reduced it to imprisonment and fine (*op. cit.*, p. 228). The rule in *Śukranīti* making adultery and offences against women crimes in which the king prosecutes (IV, v, 83 *ff.*) is the result of viewing them as grave moral offences, likely to lead to *varṇa-saṁkara*. It would appear superficially that, (as suggested by Mr. C. Śankararāma Śāstri, *Fictions in the Hindu Law Texts*, 1926, p. 35,) contrary to Sir Henry Maine's generalisation, criminal law in India was the creature of civil law. The correct view is to regard both as the creatures of *Dharma*.

17

13, *ll*. 9-11. DIVINITY OF PUNISHMENT OR DAṆḌA

This is indicated in *Manusmṛti*, VII, 14 and Yājñavalkya, I, 353.

Taysārthe sarva-bhūtānāṁ goptāraṁ dharmamātmajam |
Brahmatejomayaṁ Daṇḍamasṛjat pūrvam Is'varaḥ ||
and *Dharmo hi Daṇḍa-rūpeṇa Brahmaṇā nirmitaḥ purā* |

18

13, *ll*. 13-14. VEDIC BASIS OF HINDU LAW

The assumption that not only all law and usage but all knowledge is enshrined in the Veda, leads to the conclusions that (1) there should be internal consistency in law, (2) the differences which appear are resolvable by enquiry, and (3) for every rule of law a vedic basis *can* be discovered. As the Veda is eternal, omniscient and infallible, and the Vedas have no limit (*anantā vai vedāḥ*), it should be possible to say of them what was claimed for the *Mahābhārata* (I, lxii, 26) *viz*., 'what is not here is nowhere else' (*yan nehāsti na kutracit*), The Mīmāṁsā school held 'the Vedas entirely and exclusively concern themselves with Dharma,' *Dharma* being defined by Jaimini in his second aphorism as 'that which is signified by a direction and leads to a benefit' (*Codanālakṣaṇo artho dharmaḥ*) .When one is unable to find Vedic authority for a rule, he would assume that the *s'ruti* had passed out of view (*utsanna*, lost) or is hidden (*pracchanna*), and the *s'ruti* text will come to view if diligently searched for. A *bhāṣyakāra's* skill and learning are shown by his discovery of the texts which refer to the matters dealt with. Medhātithi and Vis'varūpa display the capacity, and particularly the latter, of whose work a modern writer has remarked that it "seems to have been written with the set purpose of establishing the Vedic origin of the Smṛtis." (*Fictions in Hindu Law Texts*, p. 79).

"When it is said that the Vedas are the source of *Dharma*, it Is not meant that the Vedas lay down precepts or injunctions

(*vidhi*) on points of Hindu Law, as later works like *Manusmṛti* or *Yājñavalkyasmṛti* do. All that is meant is that the Vedas contain incidental references to matters that are of interest to students of Hindu Law, that they take certain facts as well-known and make use of them for various purposes. The information that is contained in the Vedas on matters of Hindu Law is in the nature of what are known as *arthavādas* in the Mīmāṁsā system. As *arthavādas* form a syntactical unity with the positive injunctions (*vidhis*) laid down in the Vedas, they are authoritative. They indicate with sufficient clearness what the state of things then was. If one were to collect together the scattered Vedic texts on such topics of Hindu Law as marriage, adoption, joint family, partition, inheritance, *strīdhana*, he would find that the information is of considerable importance and is not quite so meagre as one is apt to suppose. The conclusion will irresistibly force itself upon us that the foundations of the Hindu Law are deeply laid in the Vedic age itself, that the peculiar characteristics that distinguish the Hindu Law of modern times from other systems of law had their germ in the Vedic period and that later Hindu jurists were not wrong when they relied upon the Veda as the first source of *Dharma*." Mr. P. V. Kane, who has made the above observations, has collected a number of illustrations in justification of the conclusions in a valuable paper on the *Vedic Basis of Hindu Law*, published in 1939.

19

13, *ll.* 14-15. DOCTRINE OF OPTION (VIKALPA)

The option or *vikalpa* can only be when there is a conflict between two vedic passages, and not when a *smṛti* rule runs against a *śruti*, because the latter over-rides the former. But it is open to argue that with due diligence a *śruti-pramāṇa* may be discovered for the *smṛti* rule in question. To assume otherwise will lead to the summary and easy rejection of many *smṛti* rules on the ground of their not being traced to *śruti*. This is the

orthodox Mīmāṁsaka standpoint, which further is that action in such a case should be suspended pending the discovery (*Fictions in Hindu Law Texts*, p. 116).

20

13, *ll.* 16-27. CONFLICTS OF LAW NOT REAL

Strict interpretation according to *Mīmāṁsā* will hold all conflict to be apparent only and not real, because of the canonical authority claimed for both *Arthas'āstra* and *Dharmas'āstra*. But such a possibility is envisaged in the *smṛti* texts on conflicts of laws, *e.g.* Yājñavalkya's dictum (II, 21):

Arthas'astrāt-tu balavad dharmas'āstram iti sthitiḥ ।

The same principle is enunciated by *Nāradasmṛti* (I, 99):

Yatra vipratipattis-syāt dharmas'āstrā-rthas'āstrayoḥ ।
Arthas'āstroktamutsṛjya dharmas'āstroktamācaret ॥

The doctrine of infallibity of the common source of both *s'āstras* might justify the conclusion that *s'ruti* cannot be opposed to equity and logic (*nyāya*) and the position taken by Kauṭilya in the following passage:

S'āstram vipratipadyeta dharma-nyāyena kenacit ।
Nyāyas-tatra pramāṇam syāt tatra pāṭho hi nas'yati ॥
See *Ancient Indian Polity*, pp. 164-172.

The facile assumption that *Arthas'āstra* is an inferior authority and should therefore be overlooked when it runs counter to *Dharmas'āstra* is repugnant to the orthodox tradition. Accordingly, in explaining the dictum of Yājñavalkya (II, 21) the *Mitākṣarā* maintains that the word "*arthas'āstra*" in the rule is not to well-known writers like Us'anas (S'ukra) but to the *arthas'āstra* contained in *Dharmas'āstra* works. If there is a conflict *within* the *Dharmas'āstra* between the two classes of rules, the *Dharma* rule should

prevail. He illustrates it by two cases. (1) Manu (VIII, 350-351) enjoins the summary killing of an *ātatāyin* (manifest assassin, and his like) even if he be a learned Brāhmaṇa. To act on the direction will be to go against a rule of Manu (XI, 89) that there is no explanation for the deliberate killing of a Brāhmaṇa. The former is an *artha* text, which should give way to the latter, a *Dhārma* rule. The reconciliation comes from taking the reference to the learned Brāhmaṇa *ātatāyin* as a rhetorical statement emphasising the force of the injuction on the treatment of assassins, patent and constuctive, and applying the dictum to cases *other than* those of Brāhmaṇas. (2) Yājñavalkya, I, 352 gives a rule of prudence, *viz.* that the making of a friend is better than the acquisition of land and wealth, but he has also the high moral rule (II, 1) that free from anger and covetousness the judge should decide in accordance with *Dharmas'āstra.* If a wealthy suitor is to be unjustly favored, the first rule may be observed, but it should not, being an *artha* precept opposed to a *dharma* rule.

Vijñānes'vara in discussing the texts dealing with gains of science, etc. (II, 118-119), which, if acquired without detriment to ancestral property (*pitṛ-dravyāvirodhena*), belong to the acquirer and cannot be claimed by co-parceners, states that the section of the code is full of texts based on worldly experience:

> *Lokasiddhasya anuvādakānyeva prāyeṇa asmin prakaraṇe vacanāni.*

21

14, *l.* 10. SCHOOLS OF ARTHAS'ĀSTRA

There was no appreciable development of the subject after Kauṭilya. He cites seventeen authorities. See *Ancient Indian Polity*, p. 50. Among them are writers with names which became famous in *smṛti* literature, like Kātyāyana, Nārada, Parāśara and Bṛhaspati. It is not improbable that the same writers could have written on both *s'āstras.*

22

14, *l.* 11. APPLICATION OF MĪMĀṀSĀ TO DHARMAS'ĀSTRA AND ARTHAS'ĀSTRA

Bhaṭṭasvāmin's commentary on the *Kauṭilīya* of which a fragment has been edited (Jayaswal and Banerji-Sastri, Patna. 1926) shows familiarity with Mīmāṁsā methods of interpretation. Saṅkarārya's commentary on *Kāmandakīya Nītisāra* (ed. Gaṇapati S'āstri, 1912) shows similar training. But they are inferior to great commentators like Medhātithi, Vis'varūpa and Vijñānes'vara, and even to men like Nandapaṇḍita.

23

14, *ll.* 17-18. ARTHAS'ĀSTRA CORE OF SMṚTIS

There is a good deal of *Arthas'āstra* in Manu, and even more of it in Yājñavalkya, with whose code Jolly made a detailed comparison of the *Kauṭilīya* (*Z. D. M. G.*, 1913, pp. 43-95) collecting in an appendix parallels from the *smṛtis* to over 200 passages of the *Arthas'āstra.* Kautilya's doctrines are not merely more like those of Yājñavalkya than those of any other *smṛti*, but the points of verbal identity are greater between the two. Jolly held that Kauṭilya was the borrower. I have shown grounds for thinking otherwise. See *Ancient Indian Polity*, pp. 34-37.

24

14, *ll.* 14-16. BRAHMANICAL REACTION FROM THE FIRST CENTURY A.D. FAVOURS DHARMAS'ĀSTRA

In an epoch of Vedic revival and sacrifices, the *Mīmāṁsaka* finds the attraction of the *smṛti* and the *Kalpasūtras* greater than that of the *Arthas'āstra.* He specializes in Vedic exegesis (*e.g.* S'abarasvāmin, Kumārila). He states emphatically that as "the Veda is the only source of Dharma, so Dharma is the only topic dealt with by the Veda, (Sankararama S'āstri, *op. cit.*, p. 52). *Bhāṣya*, *Samgraha*, and *Nibandha* forms of composition rapidly progress with means supplied by Mīmāṁsā for subtle and exact analysis and interpretation. The comparative study of *smṛtis* gains ground.

25

14, *ll.* 20-22. KĀMANDAKAS' NĪTISĀRA

Kāmandaka attempts to write his book in *Kāvya* style. In fact, his commentator, S'ankarārya regarded it as a *mahā-kāvya* and made his comments on the assumption. Not only does Kāmandaka use the ordinary *anuṣṭup* metre, but he tries more ornate metres also. Though he begins with a panegyric on Viṣṇugupta (*i.e.* Kauṭilya, his book is not a summary of the *Kauṭilīya*, of which not over-much use is made. Kāmandaka apparently intended his work to be an *artha-saṁhitā*, just as the *Manusmṛti* is a *dharma-saṁhitā.* The *Nītisāra* is divided into *sargas* or cantos like a classical poem. It begins with the praise of the king, and was apparently not familiar with other forms of Government :

Rājās'ya jagato hetur vṛddher-vṛdhābhisammataḥ ।
Nayanānandajananaḥ s'as'ānka iva toyadheḥ ॥

The second line, which states that the king delights the eye as the moon gladdens the ocean, appears to contain a half-veiled reference to Candragupta II, the son and successor of Samudragupta. *S'as'ānka* is Candra, and *Toyadhi* is Samudra.

The *Nītisāra* is generally supposed to be a work of the Gupta epoch. Formichi (cited in Sarkar's *Hindu Positivism*, p. 385) would assign its composition to the third or fourth century A. D. He regards it as anterior to the *Bṛhat-saṁhitā* of Varāhamihira (sixth century). Formichi's estimate will fit in with my suggestion that the *Nītisāra* is a work of the time of Candragupta II.

Kāmandaka's simile will recall to one's mind Kālidāsa's verse (*Raghuvaṁs'a*, III, 41).

Nivātapadmastimitena cakṣuṣā nṛpasya kāntaṁ
pibataḥ sutānanam ।
Mahodadheḥ pūra ivendu-dars'anāt guruḥ praharṣaḥ
prababhūva nātmani ॥

See below the note to p. 56, *ll.* 29-30.

26

17, *ll.* 8-9. SŪTRA FORM OF COMPOSITION

Dr. T. W. Rhys Davids pointed out in the introduction to his translation of the *Dialogues of the Buddha* (I, pp. xx-xxii) that the chief characteristic of the *sūtra* was that it was not intended to be *read* but to be memorised. See also, E. J. Rapson, *Ancient India*, 1914, pp. 76-77 and my *Ancient Indian Polity*, pp. 19-20. The use of the *sūtra* form was dictated by considerations of economy, oral transmission, and secrecy.

27

17, *ll.* 21-25. FORMAL PUBLIC RECITATIONS OF SŪTRAS

The Buddhists having adopted the *sūtra* form for their sacred canon were obliged, like the Brahmanas when they devised means for the accurate preservation and transmission of the Veda, to resort to public recitations in their convocations of the *suttas* of the *Tripiṭaka.* The permutations of syllables in different forms (*pāṭha*) by which the Vedas were conserved, were not adopted by the Buddhists as their *suttas* would not lend themselves, by lack of accentuation, to such devices. A *sūtra* work will be often nothing more than a list of headings. The late Mahāmahopādhyāya T. Gaṇapati S'āstri suggested that in the *Kauṭilīya* the *sūtras* were all in the *adhikaraṇa-samuddes'a* in the first chapter, and that the rest of the book was Kauṭilya's own commentary on them, as he had declared that in order to avoid in the case of his work the errors of commentators he had himself composed both the *sūtra* and the commentary.

28

18, *ll.* 7-10. LOST SMṚTI-BHĀṢYAS

Vide, Kane, *op. cit.*, p. 724 (Yajñasvāmin's bhāṣya on *Vāsiṣṭha-Dharmasūtra* mentioned by Govindasvāmi in his commentary on

Bodhāyana-Dharmasūtra, II, 2, 51); p. 248 and p. 680 on Asahā-ya's *bhāṣyas* on Gautama and Manu; the loss of the other commentaries is inferential.

29

18, *ll.* 10-15. DISTANCE OF TIME BETWEEN SMṚTIS AND COMMENTARIES

Karka, the commentator on the *sūtras* of Pāraskara is a writer of about A.D. 1000, while his text belongs to the *sūtra* age. Maskarin, the commentator of *Gautamadharmasūtra* (one of the oldest) belongs probably to the same period as Karka. Haradatta who wrote commentaries on the *sūtras* of Āpastamba and the *Gṛhyasūtra* of Ās'valāyana and the *Dharmasūtra* of Gautama, must have been separated by over twelve centuries atleast from his originals.

30

19, *ll.* 5-10. KAUṬILYA'S OWN BHĀṢYA ON THE ARTHAS'ĀSTRA

See Note 27 *supra*. The search for a lost *bhāṣya* of Kauṭilya is unnecessary in view of Dr. Gaṇapati Sāstri's convincing explanation. The declaration of Kauṭilya occurs at the end of his work: (p. 429).

Dṛṣtvā vipratipattim bahudhā s'āstreṣu bhās'yakārāṇām ।
Svayameva Viṣṇuguptas'-cakāra sūtram ca bhās'yam ca ॥

Even if this verse is not Kauṭilya's it will have to be accepted as representing an authentic tradition.

31

20, *ll.* 1-5. MĀDHAVA'S TREATMENT OF VYAVAHĀRA AND RĀJADHARMA

This portion of his commentary stands out of the main *bhāṣya* like an appendix, which it is. It is virtually a separate *nibandha*. A similar South Indian *nibandha* on *Vyavahāra*, not tacked on to

smṛti like Mādhava's, is Varadarāja's *Vyavahāranirṇaya*, which I am about to publish.

32

20, *ll*. 6-7. RECENT BHĀṢYAS AND NIBHANDHAS

Mahārāja S'arabhoji of Tanjore (A.D. 1798-1833), who had left himself no kingdom to govern, compiled a digest on civil law named *Smṛtisāra-samuccaya*. The second Maharājā of Kāṣmir and Jammu, Ranbīr Singh (A.D. 1857-1885) commissioned a *nibandha* of which the Prāyascitta-kāṇḍa was completed and published. It contains over 40,000 *granthas*. *Ācārendu* of Nārāyaṇa (printed by the Ānandās'ṛama) was written in A.D. 1838 (Kane, *op. cit.*, p. 514).

The famous *Bālambhaṭṭiya* on the *Mitākṣarā* was composed by Bālakṛṣṇa *alias* Bālambhaṭṭa Pāyaguṇḍe at Benares towards the end of the eighteenth century. The date of the writer is given by the late Babu Govinda Das as 1740-1830. He was known to Colebrooke. Kes'avadāsa composed between 1770 and 1830 the digest *Ahalyā-kāmadheuu*, named so after Ahalyā Bai Holkar. Warren Hastings, Sir William Jones and H. T. Colebrooke were responsible for getting written the *Vivādārṇavasetu*, (1773), *Vivādasārārṇava* (1789) and *Vivāda-bhaṅgārṇava* (before 1796) by a board of pandits, Sarvorus'arman Trivedi and Jagannātha Tarkapañcānana respectively.

33

20, *ll*, 26-29, NON-INCLUSION OF YĀJÑAVALKYASMṚTI IN "THE SACRED BOOKS OF THE EAST" SERIES

A translation of *Yājñavalkyasmṛti* was advertised in the series in 1876 (p. xlvi of Vol. I) and it is not clear why it was dropped. Max Müller's Life and *Autobiography* throw no light on the cause of the omission. Perhaps it was dropped owing to the publication of V. N. Mandlik's translation in 1880.

34

20, *ll.* 28-32. ATTITUDE OF INDIAN COURTS TO DHARMAS'ĀSTRA

A criticism of my observation that revived interest in the sources of Hindu law is due to *Indian* judges and lawyers possessed of a knowledge of Sanskrit is that Indian judges have been often more anxious to ignore the sources and change the law than European judges. There is an element of truth in the criticism. Hindu law is parting more and more from the traditional law through judicial interpretation chiefly; and such interpretations are due as often to the importation of exotic notions into Hindu jurisprudence as to the wish to bring law into conformity with the "modern conscience." Sir Henry Maine was never tired of attacking European judges in India as being more scrupulous about the religion and the religious usages of Hindus than the Hindus were. The following is a sample of his attack. "It has been said by an eminent Indian lawyer that, when the judges of the Sudder Courts were first set to administer native law, they appear to have felt as if they had got into fairyland, so strange and grotesque were the legal principles on which they were called upon to act. But after a while they were accustomed to the new region, and began to behave themselves as if all were real and substantial. As a matter of fact they acted as if they believed in it more than did the native inhabitants." (*Village Communities*, p. 45) J. H. Nelson, like Maine, attacked the substitution by the courts of *smṛti* law for customary law, which alone should be upheld for castes other Brāhmaṇa (see Nelson's *View of the Hindoo Law* and his *Scientific Study of the Hindu Law*, 1881).

35

21, *ll.* 1-3. COLEBROOKE'S STUDY OF MĪMĀMSA

See Max Mueller, *Chips from a German Workshop*, IV, pp. 377-433, containing his review (1872) of the Life of Colebrooke. Colebrooke is said to have preferred to remain undisturbed as

Judge at Mirzapur, owing to its nearness to Benares from which he was able to obtain both pandits to guide his studies and manuscripts for study. His study of *Mīmāmsa* probably began even earlier as he had recognised the necessity for a mastery of it for understanding the texts of Hindu law. "The disquisitions of *Mīmāmsa*", he pointed out years later in his paper on the subject (*Miscellaneous Essays*, Madras reprint, Vol. I, pp. 295-324), "bear a certain resemblance to juridical questions; and, in fact, the Hindu law being blended with the religion of the people, the same modes of reasoning are applicable, and are applied to the one as to the other. The logic of *Mīmāmsa* is the logic of law; the rule of interpretation of civil and religious ordinances. Each case is examined and determined upon general principles; and from the cases decided the principles may be collected. A well-ordered arrangement of them would constitute the philosophy of law; and this is, in truth, what has been attempted in the *Mīmāmsa*." (*op. cit.*, p. 317).

36

21, *ll.* 16-17. ALLEGATION OF PRIESTLY INFLUENCE ON HINDU LAW

Sir Henry Maine regarded the Hindu law of *strīdhana* as having been tampered with by Brāhmaṇa jurists (vide, *Early History of Institutions*, pp. 321-36). He concludes: "These inquiries, pushed much further, have shown that the Hindu laws, religious and civil, have for centuries been undergoing transmutation, development, and, in some points, depravation at the hands of successive Brahmanical expositors, and that no rules have been so uniformly changed—as we should say for the worse—as those which affect the legal position of women."

37

21, *ll.* 22-24. S'ABARA'S MODERNITY IN CRITICISM

In commenting on Baudhāyana's famous prescription of celibacy for forty years (*brahmacarya*) (II,1), S'abara suggests that

the rule was possibly introduced into Baudhāyana's *sūtra* by an impotent person who wished to conceal his defect. He remarks that the *smṛti* text 'the food of the sacrificer who has bought *somá* deserves to be eaten (*krītarājako bhojyānnah*' as due to one in starvation. A *smṛti* rule declaring that the *adhvaryu* in entitled to the cloth used in the *Vaisarjana homa* is characterised by S'abara as due to priestly avarice. Again he rejected some *smṛtis* and accepted others, anticipating the modern method.

(See *Fictions in Hindu Law Texts*, pp. 100-101)

38

21, *ll.* 23-24. KAUṬILYA AND HIS GURU

Kauṭilya cites the views of his teacher, to whom he shows reverence in Hindu style by referring to him not by name but by the word *Acārya* in the honorific plural, as many as thirty-nine times, and each citation is for the purpose of dissenting from the teacher's views. The references are collected on pp, 177-179 of Dr. Shama Sastri's *Index Verborum to the Arthas'āstra*.

39

23, *Para* 1. CRITICISED VIEWS ON THE NATURE OF DHARMAS'ĀSTRA

(1) J. J. Meyer (*Altindischen Rechts-schriften*, Leipzig, 1927, pp. 86-88) holds that *smṛti* literature, does not offer anything like a development of secular law, but represents the slow incorporation of secular law, which had its birth and development in a different *milieu* into Brahmanical works. He is apparently thinking of the older *sūtras* with an insignificant legal content, for which the explanation is that the law proper was preserved only in recollection and was unwritten. The procedure in judicial trials emphasises the functions of the *sabhyas*, or assessors, whose selection according to different vedic *s'ākhas*, implies the utilisation of divergent types of remembered rules. The *sabhyas* really decided the suit, the

presiding judge merely conducting the trial and the king delivering and carrying out the judgment.

Meyer also holds that *smṛtis* merely represent a literature of magic, and objects to their being described as law-books. But he overlooks the fact that what society enforces is law, and that there is no evidence that "secular" law developed first through *Arthas'āstra* and then crept into *smṛti*.

For Benoy Kumar Sarkar's views that *Arthasāstra* is "public" while *Dharmas'āstra* is "private" law (which overlooks the close connection in India between state and family, and the duty of the state to correct and punish irregularities in family life) and that *Arthas'āstra* is *real-politik*, while *Dharmas'āstra* represents only pious wishes (an old view of Maine), see his *Hindu Positivism*, and particularly, pp. 203 and 251. For his conception of *Dharma-s'āstra* as a 'hotch-patch of materials emanating from different sources and reflecting life and history', see *ib.* p. 197. Even in modern polity and law there is an element of idealism. It was much more so in ancient institutions. Breloer's view that *Artha-s'āstra* is "planned economy," apparently suggests a human planner. In a wider sense *Dharma* is planned economy but the author is held to be the Supreme Being.

40

24, *ll.* 9-16. Jayaswal's Views of the Difference between Arthas'āstra, Dharmas'āstra and Rājanīti

They are expressed in his *Manu and Yājñavalkya*. To him *artha-s'āstra* and *daṇḍanīti* are identical and constitute "secular" law (pp. 5, 7, 9, 16, 25, 26, 41, 42, 50, 84, 93, 263, and 273). He thinks that *artha* law was known as *vyavahāra* in the time of Gautama (p. 16) and that it is not the same as *dharma* law (p. 17). The distinction rests on a hypothesis of a differentiation of *secular* and *religious* sides in Hindu life for which there is no warrant in the *Kauṭilīya*. His statements rest on no secure authority. *e.g.*, '*Dharma* is penance law" (p. 13); "*vyavahāra*

is municipal law and secular law" (p. 13); and "*rājanīti* is constitutional law" (p. 255).

B. K. Sarkar has a glimpse of the truth when he states: "In a sense, every student of *Dharmas'āsta* was a student of *Rāja-dharma*, "and on the other hand every student of *Rājadharma*, *Nītis'āstra Daṇḍanīti* or *Arthas'āstra* was a student of *Dharma-s'āstra* from the earliest history." (*op. cit.* p. 514).

41

24, *ll.* 16-20. THE WAY OF THE MĀHĀJANA THE PATH OF DHARMA

The famous *s'loka* on the subject occurs in the *Yakṣa-pras'na* (*Mahābhārata*, Vanaparva, ch. 314, *sl.* 119, Kumbakonam edn.). It runs thus:

Tarko apratiṣṭhaḥ s'rutayo vibhinnā
Naiko munir yasya matam pramāṇam ।
Dharmasya tatvam nihitam guhāyām
Mahājāno yena gataḥ sa panthāḥ ॥

Māhājana does not mean, as it has sometimes been interpreted in recent times, the leader of a popular assembly. It stands for *s'iṣṭa* or *sādhu*, whose *ācāra* (usage) is one of the recognised sources of *Dharma*. (Manu, II, 6; Yājñavalkya, I, 7.)

42

24-25. CONNOTATION OF DHARMA

The discussion of what constitutes *Dharma* in *Vīramitrodaya* Paribhāṣāprakās'a (pp. 26-32) is illustrative. The *Kalpataru* also begins with such a disscussion.

Āpastamba (I, 20, 6) says:

Na dharmādharmau carata 'Āvām sva' iti; na deva-gan dharvā na pitaraḥ ācakṣate 'Ayam dharmo, ayam adharma' iti.

"*Dharma* and *adharma* do not wander about saying 'Here we are'; nor do the gods nor the Manes nor the Gandharvas declare 'this is *Dharma*, this is *A-dharma*.'

The *Naiyāyika* definition of *Dharma* is that it is a quality of the Soul (*Ātmaguṇau dharmādharmau*). It is invisible, and has to be inferred. *Dharma* is what is done by enjoined action, and is a quality of men. (*Vihitakriyayā sādhyo dharmaḥ pumso guṇo mataḥ*). The view of the *Mīmāmsa* is contained in Jaimini's definition "that which is signified by a command and leads to a benefit is termed *Dharma*." (*Codanālakṣaṇārtho dharmaḥ*). According to Kumārila, both the act enjoined by and the material connected with it come within the scope of *Dharma*. The *Naiyāyikas* hold that *Dharma* carries with it the idea that an invisible (*adṛṣṭa*) effect known as *apūrva* attaches to the soul from the performance of a religious act, and that it lasts until the benefit contemplated by the act is attained.

The ways in which the different schools elaborated the idea may be gathered from their summary in Mahāmahopādhyāya Bhīmācārya Jhālkikar's *Nyāyakos'a*, 3rd edn., 1928, pp. 386-388.

See Dr. Ganaganāth Jha's introduction to his translation of the *S'lokavārtika* of Kumārila (Bibliotheca Indica, 1900-1908) pp. v-xviii.

43

26, *first para.* CLASSIFICATIONS OF DHARMA

The classification in the text follows the *Mitākṣarā*, on Yājñavalkya, I, 1. See my *Ancient Indian Polity*, p. 89.

44

26, *ll.* 14-16. DHARMA COMPREHENDS ALL KNOWLEDGE

There are two fundamental hypotheses, *viz.*, that the Veda is the source of all knowledge and that its draws it authority from itself (*svataḥ pramāṇam*). They relieve the *Mīmāmsaka* of the

onus of proving the doctrine and lay upon the opponent (*pūrva-pakṣa*) the burden of disproving it, if he could. The self-evident nature of the *Veda* implies that it is valid by itself. But as knowledge springs from the *Veda* alone, all knowledge is valid. As *Dharma* is the *only* subject of *s'ruti*, *i.e.*, the Veda, *Dharma* embraces all knowledge. Vijñānes'vara in commenting on *Yājña-valkya*, II, 21, says.

Dharmas'āstrāntargatameva rājanīti-lakṣaṇam artha-s'āstram iha vivakṣitam.

45

26, *ll.* 19-25. THE VIDYĀSTHĀNAS OR DHARMASTHĀNAS

Yājñavalkya (I, 3) reckons them as fourteen, *viz.*, the four Vedas, the six *Vedāṅgas*, and *Purāṇa*, *Nyāya*, *Mīmāmsā* and *Dharmas'āstra*. The *Viṣṇupurāṇa* (as cited by Aparārka) adds four to the *dharma-vidyāḥ*, *viz.*, *Āyurveda*, *Dhanurveda*, *Gāndharvaveda*, and *Arthas'āstra*. Aparārka holds that these fourteen or eighteen constitute the sources of *vidyā* (knowledge) and not of *dharma*. The distinction which he makes between the two is illogical, for, knowledge and *dharma* are equated. The *Vīramitrodaya* has sections named *Cikitsā-prakās'a*, *Jyotiṣaprakās'a* and *Lakṣaṇa-prakās'a* (the last has been printed) and the *Toḍarānanda* has a *Jyautiṣa-saukhya*.

46

27. THE KṚTYA-KALPATARU

I have summarised the relevant information about this great digest, in two papers on *Lakṣmīdhara* and the *Kṛtya-Kalpataru* and *Vijñanes'vara and Lakṣmīdhara*, published in the Golden Jubilee volume of the Madras Law Journal, (1941), pp. 148-168 and 199-222.

I have discovered what purport to be two of the lost books of the *Kalpataru*. They deal with *vrata* and *pūjā*. A fragment which relates *prāyasccitta* has also been found.

47

28, *ll.* 28-31. OMISSION OF RĀJADHARMA AND VYAVAHĀRA IN DIGESTS

The *Smṛticandrikā*, which Mr. Kane regards as the most complete of the earlier South Indian digests, (*op. cit.*, p. 343) deals only with *Saṁskāra, Āhnika, Vyavahāra, S'rāddha, Āsauca, and Prāyasccitta.* The *Smṛti-muktāphala* of Vaidyanātha Dīkṣita has sections on *Varṇās'rama, Āhnika, Āsauca, S'rāddha, S'uddhi Kāla, and Prāyasccitta.* Mr. Kane (p. 671) mentions a *Vyavahāra* section of it, and Mr. J. R. Gharpure of Poona has personally mentioned to me that he has seen a copy of it, but it seems unknown in South India. The date c. 1600 is suggested by Mr. Kane for Vaidyanātha Dīkṣita.

48

29, *ll.* 2-5. SECTIONS OMITTED IN THE RATNĀKARA BY CAṆḌES'VARA

They are those dealing with *pratiṣṭhā, prāyas'citta, s'ānti* and *mokṣa,* for all of which he had originals in the *Kalpataru,* on which he has built his own *nibandha.*

49

29-30. THE HYPOTHESES OF MĪMĀMSĀ

See S'ankararāma S'āstri's *Fictions in Hindu Law Texts,* passim, and Medhātithi's long comment on *Manu Smṛti,* II, 6.

50

30-31. CONSIDERATION OF APPARENT CONFLICTS OF AUTHORITIES

In resolving such apparent conflicts (the *reality* of such conflicts will *not* be accepted) a number of principles are utilised. " A Vedic basis is presumed only in those cases where an invisible

effect or an effect not accountable to any visible, tangible cause is deemed to be produced. Some *smṛtis* are *dṛṣṭārtha*, that is, are intended to produce a visible result; and, some are *adṛṣṭārtha*, that is, are intended to produce an invisible result. The ultimate objects aimed at by the former class of *smṛtis* are *Artha* and *Kāma*, that is, wealth and pleasure; of the latter, are *Dharma* and *Mokṣa*, that is, virtue and salvation. Even in the case of *adṛṣṭārtha smṛtis*, where a particular text is obviously due to interested causes or motives like avarice, ignorance etc., it is not necessary to resume a Vedic orgin for it." (*Fictions in Hindu Law Texts*, p. 105). Or, the conflict may be due to incorrect exegesis or failure to reject a manifest interpolation into the *smṛti* from which the controverted passage is taken.

The distinction between *dṛṣṭārtha* and *adṛṣṭārtha* is also sometimes treated as a distinction between *nyāyamūla* and *vacanamūla*, and *lokasiddha* and *vedasiddha smṛtis*.

Again, in considering contradictions arising from conflicting usage, a principle to be borne in mind is that the *acāra* of a good man (*sādhuḥ*) is not binding if he disbelives in the *Veda*. This rules out Buddhist and Jaina customs unless they have independent Vedic or *smṛti* authority. Precedents of conduct even in *s'ruti* are valid only if such conduct was clearly due to a conscious sense of rectitude, *i.e.*, of doing a meritorious act, in the performer (*op. cit.*, p. 138).

The *Bhaviṣya-purāṇa*, cited by the *Vīramitrodaya* (Paribh., p. 19) classifies *smṛtis* as under:

Dṛṣṭārthā tu smṛtiḥ kācit adṛṣṭārthā tathāparā |
Dṛiṣṭādṛiṣṭārtharūpānyā nyāyamūlā tathāparā ||
Anuvādasmṛtistvanyā s'iṣṭair-dṛiṣṭā tu pancamī |
Sarvā etā Vedamūlā dṛiṣṭārthā parihṛtya tu ||

The *Dṛiṣṭārthasmṛti* is said to deal with the following topics, according to the same *Purāna*:

Ṣaḍguṇasya prayojyasya prayogaḥ kāryagauravāṭ |
Sāmādīnām upāyānām yogo-vyāsasamāsataḥ ||

Adhyakṣāṇām ca nikṣepaḥ kanṭakānām nirūpaṇam ।
Dṛṣṭārthe yam smṛtiḥ proktā ṛṣibhiḥ Garuḍātmaja ॥

The *Arthas'āstra* under this classification is a *dṛstārtha smṛti*, and has no Vedic source (*a-vedamūla*). The *smṛtis* with a Vedic basis are classifiable as (1) other-worldly, (2) worldly as well as other-wordly, (3) ratiocinative and (4) digests.

51

31, *ll.* 14-20. ALLEGED RULE OF KĀLIKĀ-PURĀṆA ON THE ADOPTION OF A BOY WHO HAS HAD SAMSKĀRAS

The adoption of a boy, who has undergone his *upanayana* in his father's house, is prohibited by Kamalākara, on the authority of a passage of the *Kālikāpurāṇa*, which is thus translated by V. N. Mandlik, (Trn. of *Vyavahāramayūkha*, p. 58) :

" A son whose ceremonies upto tonsure have been performed with the *gotra* or family name of his father, does not attain the sonship of another man."

Nīlakanṭha (*Vyavahāramayūkha*, ed. Kane, p. 114) rejects the passage on the ground that in two or three copies of the *Kālikāpurāṇa* it is not to be seen :

Idam tu vaco na tathā visrambhaṇīyam, dvi-tri-Kālikāpurāṇa-pustakeṣu adars'anāt.

52

31, *ll.* 30-31. JUDGES AND ASSESSORS TO BE TRAINED LAWYERS

A trained Judge replaces the King in trials (*Manu*, VIII, 9, 11) and he judges along with three assessors (*sabhyāḥ*). The same procedure is laid down by *Yājñavalkya* (II, 3) :

Apas'yatā kāryavas'āt vyavahārān nṛpeṇa tu ।
Sabhyaiḥ saha niyoktavyo brāhmaṇaḥ sarvadharmavit ॥

Nārada indicates the manner in which the judge should proceed to discharge their duty :

Dharmas'āstram puraskṛtya prāḍvivākamate sthitaḥ ।
Samāhitamatiḥ pas'yet vyavahārān anukramāt ॥

The duties of the assessors are laid down by *Manu* (VIII, 10-19).

The *sabhyas* had to be of an odd number (three according to Kauṭilya and Manu and any number upto seven, so long as it was odd) for the sake of getting a decision in case of difference of opinion, as pointed out by Mitramis'ra:

> *Saṃkhyā-vaiṣamyam tu, bhūyo alpavi-rodhe bhūyasām syāt iti* (*Vīramitrodaya*, p. 35).

The judge must abide by the finding of the assessors, according to *Bṛhaspati* (Trn. Jolly, I, 24).

53

32. PARIṢADS

In determining doubtful points of law, the rule to follow was the opinion of those conversant with law and usage (*Dharmajña-samayaḥ pramāṇam*); Manu, XII, 108, laid down that in cases in which the law was not known (*anājñateṣu*, accepting the text of the *Kalpataru* instead of '*anāmnāteṣu*' in the printed editions, the law should unhesitatingly be taken to be what the cultured and holy men (*s'iṣṭāḥ*) lay down :

> *Anājñateṣu tu dharmeṣu kathamsyāt iti cet-bhavet* ।
> *Yam s'iṣṭā brāhmaṇā brūyuḥ sa dharmas-syāt as'aṅkitaḥ* ॥

According to Jayaswal (*Manu and Yājñavalkya*, p. 78) the *Samiti* or *pariṣad* was the body which settled disputed law in Vedic times. The name was kept by later *ad hoc* committees with reduced numbers, and they became also bodies of experts. Manu lays down that if a *pariṣad* cannot be constituted the opinion of even one 'excellent brāhmaṇa' will suffice.

Who are the men qualified to sit on a *pariṣad* ? The answer is that they should be *s'iṣtas* (who are described as *akāmātmā*), they should be sympathetic to all living beings (*samāḥ sarvabhūteṣu*), and learned in the Vedas (*bahus'rutāḥ*), they should accept the validity of both Veda and perception (*s'ruti-pratyakṣahetavaḥ*) and they should be skilled in logical inference (*ūha-apoha-kus'alāḥ*),

practical-minded (*des'a-kāla-vibhāgajñāḥ*) full of resource (*yukti-mantaḥ*) and of blameless character (*sadācarāḥ*).

In constituting a *pariṣad* certain considerations were to be borne in mind: representation of all *s'ākhas* of the Vedas, and in cases of trial requiring special knowledge of arms etc. the inclusion of experts in such branches of knowledge. The strength of a *pariṣad* may be increased if it is instituted for the determination of special matters like penance (then its strength should not exceed seven), *mīmāmsa* (when its strength should be under twenty-one) and for grave sins (when it can go up to a hundred members). The *pariṣads* for *kṣatriyas* and *vāis'yas* may be still larger in size. The *Kṛtya-kalpataru* (Brahmacāri-kāṇḍa, f. 69) limits the scope of caste *pariṣads* to the determination of *anuloma, utkṛṣṭavarṇa-vadha, utkṛṣṭastrīgamanādi, vrata, and s'uddhi.* This restriction of scope in *pariṣads* for non-Brāhamaṇas is interesting as it must reflect the practice in the eleventh century.

Sankha-Likhita, cited in *Kalpataru*, (*ib.* fol. 60) limit the scope of a *Brāhmaṇa pariṣad* to the determination of the correctness of Vedic texts, (*S'ruti-grahaṇam*), *smṛti* rules, custom and usage (*ācāra*) and *Dharma* generally. It will be seen that a *Brāhmaṇa-pariṣad's* scope was much wider than that of *pariṣads*, for other *varṇas*. The difference is probably due to the fact that the former were the bodies normally convened to determine rules for judicial guidance.

After the seventh century A. D., the *pariṣad* apparently ceases to function, and the Paṇḍita (who bears the title of *Vinaya-Sthiti-Sthāpaka* in the Gupta inscriptions) comes into prominence as a Legal Remembrancer. Later on, heads of religious *Maṭhas* claim the right to constitute *pariṣads* or exercise themselves the functions of *pariṣads*.

54

33, *line* 2. VASTNESS OF DHARMAS'ĀSTRA LITERATURE

An idea of its persent size may be gained by the following data. " If all the *smṛtis* cited in later *nibandhas* be taken into

account, the number will be found to be about a hundred." (Kane, *op. cit.*, p. 134). Mr. Mandlik, who made elaborate calculations of the authorities quoted by certain *nibandha* writers found for instance, that Kamalākara quotes in the *Nirṇaẏasindhu* alone 13 works on *s'rauta*, 131 *smṛtis*, 68 *purāṇas*, and 272 *bhāṣyas*, *nibandhas* etc., making in all 484. See p. lxvi of the Introduction to his *Vyavahāra-mayūkha*, 1880.

55

A point to note is that the earlier *nibandha* writers like Lakṣmīdhara quote a relatively smaller number of *smṛtis* and *purāṇas* than writers like Hemādri and Kamalākara. Even if we allow for Lakṣmīdhara's claim that he made it his rule not to cite ordinarily more than one or two authorities when a point had to be established, the very large number of later *smṛtis* calls for enquiry. Mr. Kane's list of works on *Dharmas'āstra* runs to 170 printed pages of double-columns, and his list of authors runs to 83 pages.

33. DHARMAS'ĀSTRA ACTIVITY IN THE MIDDLE OF CIVIL TROUBLES

A reading of Mr. Kane's work or of Jolly's *Hindu Law and Custom* will show how great was the activity during the period of internecine wars which preceded the Musalman conquest and during the Muhammadan period itself.

56

34, *ll.* 7-10. IDEA OF UNION OF INTEREST BETWEEN KING AND SUBJECT

This is stated forcibly by Kauṭilya (I, 19) :

Prajāsukhe sukham rājnaḥ prajānām ca hite hitam ।
Nātmapriyam hitam rājñaḥ prajānām tu priyam hitam ॥

The whole of the *Rājadharmaparva* of the *Mahābhāṛata* is an elaboration of this dictum.

See *Ancient Indian Polity*, pp. 85-87.

57

34, *ll.* 12. KING AND DAṆḌA DIVINELY CREATED

The creation of the King by the Supreme Being is found in the stories of the Social Contract in the *Mahābhārata* (S'āntiparava ch. 67-68). See also,

Manusmṛti, VII, 3, *Kauṭilīya*, I, 13 and *S'ukranīti*, I 125-140.

See *Ancient Indian Polity*, pp. 39, 80, 81.

58

34, *ll.* 14-16. HORROR OF ANARCHY

See *Arājata.*

See *ib.*, pp. 49, and 82-83.

59

34, *ll.* 19-24 INFLUENCE OF GOOD GOVERNMENT ON THE SEASONS

Vide *ib.* 108. Somadevasūri puts the point pithily:

Nyāyataḥ parīpālake rājñi prajānām kāmadughā dis'aḥ ǀ

60

34, *ll.* 24-25 RĀJĀ KĀLASYA KĀRAṆAM

The dictum that the king is the cause of the complexion of his age is a picturesque way of saying that on the king rests the responsibility for good and bad government, through which, according to ancient Indian belief, the complexion (or, as we would say the atmosphere) of the *yuga* in which he lives will be changed for better or worse. It occurs in a long passage expounding regal responsibility in the Sāntiparva of the *Mahābhārata*, where it may be studied in its context. (ch. 69, vv. 74-105). The responsibility consists in duly enforcing the law, *i.e. Daṇḍanīti.* A careless, idle, indifferent

or unjust king will not observe the rules of the science of government. Then he will incur the odium for not only going himself wrong but ruining the people. The passage may be rendered thus:

" *Daṇḍanīti* compels men to observe the duties of the castes and orders. Duly observed, it makes people act virtuously. If the four *varṇas* attend to their appointed duties, and wholesome barriers are maintained, then peace and contentment flow from the due enforcement of law, people are freed from fear, the *dvijas* attend to their prescribed social duties, and the people are truly happy. Whether (this result having been produced) it is the king who makes the age, or the age it is which makes the king (*i.e.* do what he does) admits of no doubt; for, it is the king who makes the age. (*Rāja kālasya kāraṇam*). The first *yuga* (thus) *i.e.* the Golden Age, comes into being when a king governs in strict accord with *Daṇḍanīti*. Righteousness is the feature of the *Kṛtayuga* (the first Age); there is no wrong-doing in it. The men of all the four orders (*cāturvarṇa*) find no satisfaction in unrighteousness. Every one gets what he desires and keeps it (in such an epoch). The Vedic rites are productive (then) of spiritual merit (*puṇya*). The seasons are joyous, and free from evil . . . Diseases disappear. Men live long. Wives are not widowed. Misers disappear. The earth yields in abundance even without being tilled . . . Nothing but virtue exists. These are the marks, Yudhiṣṭhira, of the *Kṛtayuga*. When a king relies only on discharging three parts of his duties (according to *Daṇḍanīti*), the epoch becomes like *Tretāyuga*. . . The earth (then) yields crops only when tilled. If a king neglects half his duties of government, an age like the *Dvāparayuga* sets in. The tilled earth now yields but half of what it could yield. When the king totally ignores the *Daṇḍanīti* and governs oppressively, then the *Kaliyuga* sets in. During this epoch vice is rampant, and virtue is disappears. Men fall away from their appointed duties. S'ūdras live by mendicancy and Brāhmṇas by service (reversing their appointed modes of life).

People fail to get what they aim to secure, and what they obtain they are unable to keep. The intermixture of castes by marriage (*varṇasamkara*) becomes common. The performance of Vedic rites is ineffective. The seasons are fraught with evil. Disease thrives, and men die prematurely. The clouds do not rain, and the crops wither. The earth dries up when the king does not observe the rules of the *Daṇḍanīti*. The king is (thus) the maker of the *Kṛtayuga* (in his own life-time), of the *Tretayuga* and of the *Dvāparayuga ;* he also causes the *Kaliyuga*, and . . incurs great sin. Sinking in the sins of his subjects he becomes infamous and plunges into Hell."

It will be seen that the aim of the passage is to impress on kings the duty and the wisdom of ruling according to the *s'āstras*. There is nothing in it to suggest that the king has special powers to act contrary to established law and usage.

S'ukranīti (IV, i, 11. 90—125) paraphrases, as is its practice, the chapter of the *Mahābhārata* in which the dictum '*Rājā Kālasya Kāraṇam*' occurs. It puts the matter pithily :

> *Yugapravartako rājā dharmādharma-pras'ikṣaṇāt* |
> *Yugānām na prajānām na doṣah kintu nṛpasya hi* ||
> *Supuṇyo yatra nṛpatiḥ dharmiṣṭāḥ tatra hi prajāḥ* |
> *Mahāpāpī yatra rājā tatrādharmaparo janaḥ* ||

Mr. B. K. Sarkar, who translated the expression *yugapravartako Rājā* as "the King is the maker of the Age" (possibly to bring it into line with the *Mahābhārata* expression), added a pointed warning: "This is the exact opposite of the dictum '*the King can do no wrong*.'" To rule in strict accord with the *s'āstras* was in India a personal responsibility of the King. He *could* do wrong and great wrong, by negligence or inattention to the *s'āstras* in the act of governing.

By a curious anomaly this telling sentence, torn from its setting, has been wrongly interpreted and cited in defence of change in social usage initiated the state. The drift of the injunction is conservative, and will not justify a reformist interpretation.

61

34, *ll*: 25-26 RĀMARĀJYA

See the picture of the return of the Golden Age in the *Rāmāyaṇa*, VI, 131, *sl.* 97-104 :

Rāghavas'cāpi dharmātmā prāpya rājyam anuttamam ।
Īje bahuvidhair yajñaiḥ sa-suta-bhrātṛ-bāndhavaḥ ॥
Na paryadevayan-vidhavā na ca vyālakṛtam bhayam ।
Na vyādhijam bhayam cāsīt Rāme rājyam pras'āsati ॥
Nirdasyurabhavan loko nānartham kascit aspṛs'at ।
Na ca smavṛddhā bālānām preta-kāryāṇi kurvate ॥
Sarvam muditamevāsīt sarvo dharmaparo bhavat ।
Rāmamevānupas'yanto nābhyahimsan-parasparam ॥
Āsan varṣa-sahasrāṇi tathā putrasahasriṇaḥ ।
Nirāmayā vis'okāsca Rāme rājyam prās'āsati ॥
Nityamūlā nityaphalāḥ taravaḥ tatra puṣpitāḥ ।
Kāmavarṣī ca parjanyaḥ sukhas-sphars'asca mārutaḥ ॥
Svakarmasu pravartante tuṣṭāḥ svaireva karmabhiḥ ।
Āsan prajā dharmaparā Rāme s'āsati nānṛtāḥ ॥
Sarve lakṣaṇa-sampannāḥ sarve dharma-parāyaṇāḥ ।
Das'avarṣa-sahasrāṇi Rāmo rājyam akārayat ॥

The way in which a righteous king changes his age into the Golden Age is described in *Mahābhārata*, S'āntiparva, Ch. 69, vv., 74-105.

62

34, *ll.* 27-30. KĀRTA-VĪRYĀRJUNA

Kālidāsa (*Raghuvams'a*, VI, 39) describes Kārtavīryārjuna's miraculous power of projecting himself before an offender, when an offence was about to be committed and then restraining him from committing the offence, instead of waiting to punish him after the offence :

Akāryacintā-samakālam eva prātur-bhavan
cāpadharaḥ purastāt ।

Antas-s'ariresu api yaḥ prajānām pratyādides'a avinayam vinetā ||

Kārtavīryārjuna was the king of the Haihayas, with his capital at Māhiṣmatī. By propitiating Dattātreya he obtained from him these boons: a thousand arms; the extirpation of all evil desires from his kingdom; the subjugation of the world by just government; victory over enemies; and death only from the hands of a person renowned through the universe. He took Rāvaṇa a prisoner. He was killed by Paras'urāma. The *Viṣṇupurāṇa* says of him (IV, 11):

Na nūnam Kārtavīryasya gatim yāsyanti pārthivāḥ |
Yajñair-dānair-tapobhir-vā pras'rayeṇa s'rutena vā ||

63

32, *ll.* 30-32. RĀMA AS THE RESTORER OF THE GOLDEN AGE IN TRETĀ-YUGA

The description *Tretā-yuga-pravartita-Kārtayuga-vṛttānta* is applied to Rāma by the Vaiṣṇava saint Vedānta Des'ika in his *Raghuvīra-gadya-stotra*.

64

35, *l.* 2. EXPULSION OR EXECUTION OF AN EVIL RULER

A coronation oath (*pratijñā*) had to be taken by the King on his *abhiṣeka*. If he failed to keep the pledge, he was stigmatized as an *asatya-pratijña* and was held to have automatically forfeited the throne. The boast of the satrap Rudradāman (A.D. 128-150), who was a S'āka, that he was *satya-pratijña* meant not that he was faithful to his international or treaty engagements, but that he truthfully adhered to the terms of his coronation oath. The killing of the last Maurya, Bṛhadratha, by Puṣyamitra, was on the ground of *pratijñā-durbala* (Bāṇa's *Harṣacarita*) (Trn., p. 193). The traditions mention the destruction of king Vena for mis-government.

The *Mahābhārata* (Ānus'. Parva., lxi, 32-33) specifies the kind of rulers who could be killed :

A-rakṣitāram hartāram viloptāram anāyakam ।
Tam vai rāja-kalim hanyuḥ prajās-sannahya nirghṛṇam ॥
' *Aham va rakṣitā* ' *ityuktvā yo na rakṣati bhūmipaḥ* ।
Sa samhatya nihantavyaḥ s'veva sonmādāturaḥ ॥

65

35, *ll*. 2-3. TAXES ARE THE KING'S WAGES

This is indicated in the *Mahābhārata* (XII, ch. 71, s'l. 10) :

Baliṣaṣṭena s'ulkena daṇḍena athāparādhinām ।
S'āstrānītena lipsethā vetanena dhanāgamam ॥

The King is made the servant of the people by being given his share, says S'ukra (I, 375) :

Svabhāgabhṛtyā dāsaytve prajānām ca nṛpaḥ kṛtaḥ ।

The same idea is attributed to the Buddhist teacher Āryadeva, who retorted to a king, when he claimed that he was the fountain of all transactions : " What conceit is yours, King, when you are a mere servant of the *gaṇa*, receiving one-sixth share as your wage ?" (Cited from *Catus's'atīkākā* in Dr. U. N. Ghosal's *Hindu Political Theories*, p. 209).

See my *Ancient Indian Economic Thought*, p. 114 and p. 189.

66

35, *l*. 4. KING'S FREEDOM ENDS WITH CORONATION

The King had to take with deep faith the coronation oath, which is described thus by the *Mahābhārata* (S'āntiparva, lviii, 115-116, Kumbakonam ed.) :

Pratijñāmca abhirohasva, manasā, karmaṇā, girā ।
" *Pālayiṣyāmi aham bhaumam, Brahma,*" *ityevacāsakṛt* ॥
Yascātra Dharmo nītyukto, daṇḍanīti-vyapās'rayaḥ ।
Tam as'ankaḥ kariṣyāmi, sva-vas'o na kadācana" ॥

(*cf.* Jayaswal, *Hindu Polity*, II, p. 45).

67

35, *ll.* 15-16. VIṢṆU RESIDES IN SUBJECT AS IN KING

"Caṇḍes'vara (*Rajanītiratnākara* p. 74,) cites this text:

" *Adyārabhya na me rājyam, rājāyam rakṣatu prajāḥ* " ।
Iti sarvam prajā-viṣṇum sākṣiṇam s'rāvayen-muhuḥ ॥

The last line is added to the verse from the *Mahābhārata*, as it perhaps occurred in Caṇḍes'vara's copy of the epic.

The dictum " *Nāviṣṇuḥ pṛthvī-patiḥ*," *i.e.* there is no king who is not " Viṣṇu " is well-known.

68

35, *ll.* 16-18. THE KING'S DUTY TO KNOW DHARMA

This is laid down in the following precept for which paraphrases occur in the *smṛtis*:

Dharmādharmau vijānan hi s'āsate abhiratas-satām ।
Prajām rakṣet nṛpas-sādhuḥ hanyācca paripanthinaḥ ॥

69

35, *l.* 20. UNHAPPINESS IS DUE TO ERROR IN GOVERNMENT

The classical example is that given in the *Uttarakāṇḍa* of the *Rāmāyaṇa*, ch. 73 and 76. A Brāhmaṇa brought his dead son, who was hardly more than a boy, to the palace of Rāma and complained that the death was due to the fault of the king. Rama admitted responsibility, convened a *pariṣad* of sages to consider the cause of the misfortune, and was informed by Nārada that it was owing to a *s'ūdra* performing austerities. Having preserved the corpse of the boy in oil, Rama proceeded to search for the *s'udra* whom he found in the south. The ascetic reveals himself as a *s'ūdra* named S'ambhūka, who performed the austerities to attain the status of a god. Rāma decapiated him, and prayed for the restoration of the life of the dead child, who promptly revived. Kālidāsa (*Raghuvamsa*, XV, 42-57) retails the incident and adds that the S'ambhūka (so spelt here) obtained Heaven, since he had undergone punishment at the hands of the King for his transgression:

Kṛtadaṇḍaḥ svyam rājñā lebhe s'ūdraḥ satām gatim ।

Bhavabhūti, who introduces the incident in the second act of *Uttararāmācarita*, makes Rāma raise S'ambhūka to the *Vairāja* heaven for his *tapas*, even though it was against *Dharma* for him to have performed it.

The relevant verses in the *Rāmāyaṇa* are:

Rājadoṣair vipadyante prajā hyavidhipālitāḥ ।
Asad-vṛtte hi nṛpatau akāle mṛiyate janaḥ ॥
Yadvā pureṣvayuktāni janā janapadeṣu ca ।
Kurvate naca rakṣāsti tadā Kālakṛtam bhayam ॥
Suvyaktam rājadoṣo hi bhaviṣyati na sams'ayaḥ ।
Pure jānapade cāpi tathā bālavadho hyayam ॥
(ch. 73, 16-19)

Yo hyadharmamakāryam vā viṣaye pārthivasya tu ।
Karoti cās'rīmūlam tat pure vā durmatir-naraḥ ॥
Kṣipram ca narakam yāti sa ca rājā na sams'ayaḥ ।
(ch. 74, 28-29)

70

36, *l.* 1. ADJUSTMENT OF DHARMA TO CAPACITY

This is the fundamental reason for having different *dharmas* or rules for the same acts when done by women and *non-dvijas*, or by the young and the very old, by the diseased, or by persons in special situations (*e.g.* soldiers in camp, kings on the battle-field persons attending festivals, funerals, marriages, times of *des'a-viplava* or revolution) or by persons in this *yuga* as compared with those in former *yugas*.

71

36, *ll.* 10-12. ADJUSTMENT OF LAW TO CHANGING SOCIETY

The *locus classicus* on the subject is the following passage in Sir Henry Maine's *Ancient Law* (ed. Pollock, p. 29):

" A general proposition of some value may be advanced with respect to the agencies by which Law is brought into harmony with society. These instrumentalities seem to me to be three in

number, Legal Fictions, Equity and Legislation. Their historical order is that in which I have placed them. Sometimes, two of them will be seen operating together, and there are legal systems which have escaped the influence of one or other of them. But I know of no instance in which the order of their appearance has been changed or inverted."

72

36, *ll.* 12-18. ABSENCE OF THE INFLUENCE OF LEGAL FICTIONS IN HINDU DHARMA

My statement is in flat opposition to the basic idea of Mr. C. S'ankararāma S'āstri's scholarly work, *Fictions in the Development of Hindu Law Texts*, 1926. He has brought to his task knowledge of modern law, and familiarity with the technique and literature of *Mīmāmsa.* But he has succumbed to the influence of analogy, and finding that the *nyāyas* of *Mīmāmsa* (which Col. G. A. Jacob would translate as 'popular maxims') have helped the development of interpretation, he has taken them to be *fictions.* The assumption conceals two errors: the error of attributing to the Hindu thinkers and *smārtas*, who handled the *nyāyas*, an attitude of tepid belief or scepticism, which *we* now entertain and *they* could not have had, and secondly, the mistake of overlooking the element of disbelief in the reality of the assumptions underlying 'legal fictions' which constitutes the real test of 'fiction.' Maine's generalisation was based on his experience of European jurisprudence. There is no need to force the sense of non-European jural ideas to bring them within his generalisation. This is the temptation to which Mr. S'ankararāma S'āstri has yielded. The value of his work, as a helpful introduction to the *Mīmāmsa* way of approach to Hindu law, is not diminished sensibly by the wrong assumption with which he starts, and which gives the title to his book. *Fictio* in Roman law was a term of pleading and "signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; such for example as that the plaintiff was a Roman citizen, when in truth he was a

foreigner. The object of the fictions was, of course, to give jurisdiction, and they therefore strongly resembled the allegations in the writs of the English Queen's Bench and Exchequer, by which those courts used to usurp the jurisdiction of Common Pleas: the allegation that the defendant was in the custody of the King's Marshal, or that the plaintiff was the King's debtor, and could not pay his debt by reason of the defendant's default. But I now employ the term *Legal Fiction* to signify any assumption which conceals, or affects to conceal, the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified. . . . The *fact* is that the law has been changed; the *fiction* is that it remains what it always was." (*Ancient Law*, pp. 30-31.)

Adoption is named as an example of fiction in Roman law. In Hindu law the belief in the adopted son being a real son, after adoption, is as vivid as the belief in the change which the Roman Church believes to have taken place in the Sacrament, which is visible only to the eye of faith.

The pursuit to its logical ends of the idea of the transformation of the *dattaka* (adoptee) into a *real* son in Hindu law will not have been possible if there had ever lurked, as it is bound to do in fictions, a disbelief in the effectiveness of the transformation brought about by the *datta-homa*. The doctrine of spiritual benefit, against which Maine has many a fling, was implicity believed in by those who applied it, and who were affected by it. To construe it as a fiction imposed by designing Brāhamaṇas is not only injustice to them but is a misreading of history.

73

3b, *ll.* 24-28. CONSERVATISM NOT CHARACTERISTIC OF EARLIER, AND LIBERAL VIEWS OF LATER SMĀRTAS

A telling instance is afforded in *Mīmāmsa* literature, which shows the modernism of S'abarasvāmin, the ***bhāṣyakāra***, and another in ***bhāṣyas*** of ***Dharmas'āstra*** by Medhātithi. The 'modernism' of

S'abara is corrected by the much later Kumārila, Pārthasārathi Mis'ra and Mādhava. The attitude revealed in *smārta* writings on such topics as women's property, *niyoga*, and *sahamaraṇa*, as well as *melccha-prāyascitta* illustrate the dictum. Conservatism and liberalism are qualities of the mind which are not necessarily responsive *absolutely* to environment or the time-spirit.

74

37, *ll.* 2-7. SCHOOLS OF DHARMAS'ĀSTRA

Unity of thought constitues the bond uniting writers, who may be classed for convenience into " schools ", particularly if they can be seen as exercising reciprocal influence. Ordinarily such groups form around a teacher of eminence, whose influence is transmitted by his disciples, and their disciples, in uninterrupted succession. The existence of such groups *in Arthas'āstra* is well-known, as seventeen of them are alluded to in the *Kauṭılīya*, schools of rhetoric and grammar are also known, and of course of philosophy. The hypothesis of the dependence of *smṛti* on *s'ruti* and the doctrine of *ekavākyatvam*, helped the attempts to fuse opinion and overcome discord. When in such matters as *s'rāddha*, Mitramis'ra or Kamalākara criticises the views of the *Maithilas*, or the *Gauḍas*, he merely implies that the views so classed enshrine wrong interpretations of rules. The arbitrary division of Hindu Law into schools is an achievement of modern lawyers. It has emphasised and stabilized differences of opinion, which were originally *personal*, by giving them a *regional* base, in spite of the fact that outside the field of customs, geography had nothing to do with opinion. To followers of Jīmūtavāhana it is self-evident that the only views that should properly be enforced all over India are his, just as to the followers of other writers, like Vijñānes'vara, the opinions of their own sages must have equally wide pre-eminence. Common ancestry, physical or spiritual, need not create homogeneity in creed. This is shown by Kauṭilya's marked opposition to the views of his own teacher, by differences in rules or *sūtras* belonging to a

common *s'ākhā* or Vedic branch, and by divergent views expressed by cousins like Nīlakaṇṭha and Kamalākara, who had also a common spiritual ancestry, even on such topics of every-day applicability as the adoption of grown-up persons.

75

38, *ll.* 10-11. KAUṬILYA AND MANU ON THE AUTHORITY OF NYĀYA

Kauṭilya states thus his position in a passage on the conflict of laws. (III, 1):

Samsthayā Dharmas'āstreṇa S'āstram vā Vyāvahārikam ।
Yasminnarthe virudhyeta dharmeṇārtham vinirṇayet ॥
S'āstram vipratipadyeta dharman-nyāyena kenacit ।
Nyayāstatra pramāṇam syāt tatra pāṭho hi nas'yati ॥

In a *s'loka* preceding those cited above, Kauṭilya declares that the king conquers the earth to the limits of the four quarters who follows *Dharma*, *Vyavahāra*, *Samsthā and Nyāyā*:

Anus'āsāddhi dharmeṇa vyavahāreṇa samsthayā ।
Nyāyena ca caturthena caturantām mahīm jayet ॥

Manu was contemptuous of those who showed disrespect towards the source of *Dharma* in Veda, and applied mere reason to determine it, and ordained that they should be excommunicated as atheists and revilers of the Veda (II, 10):

Yo avamanyeta te mūle hetus'āstrās'rayāt dvijaḥ ।
Sa sādhubhir bahiṣkāryo nāstiko vedanindakaḥ ॥

Yājñavalkya, though he held that *Dharmas'āstra* was superior to *Arthas'āstra*, admitted the superiority of the *smṛti*, which was upheld by *nyāya* over that which was supported by *vyavahāra* (rule of procedure):

Smṛtyorvirodhe nyāyastu balavān vyavahārataḥ ।
Arthas'āstrāttu balavad-dharmas'āstram iti sthitiḥ ॥
(II, 21)

Nārada (p. 17) admitted the force of *nyāya* in deciding on the validity of conflicting *Dharma* texts :

Dharmas'āstravirodhe tu yukti-yukto vidhiḥ smṛtaḥ.

Bṛhaspati went further (ed. Rangaswami, I, 111) :

Kevalam s'āstramās'ritya na kartavyo vicāraṇā |
Yuktihīnavicāre hi dharmahāniḥ prajāyate ||

In cases of conflict between two opposed Dharma text, Manu (II, 14) simply followed the old practice upheld by Gautama (I, 3-6) :

Dṛṣṭo dharmavyatikramaḥ | *Sāhasam ca mahatām* |
Na tu dṛṣṭārthe avaradaurbalyāt tulyabalavirodhe vikalpaḥ |

76

38, *ll.* 13-14. CUSTOMARY LAW SYSTEMATISED, RECORDED AND APPLIED

The following passages of the *Kauṭilīya* will show how it was to be done :

(1) In preparing a 'Domesday-survey' the laws and customs have to be digested and recorded in a book :

Des'a-grāma-jāti-kula-saṅghātānām dharma-vyavahāra-caritra-saṃsthānām ... nibandhapustakastham kārayet. (p. 62)

(2) The King should promulgate the recorded customs (p. 63) :

pracārayaritrasamsthānām ca nibandhena prayaccet.

(3) In a conquered country, for the purpose of pacification, he should establish its old laws and customs, (p. 408) :

Caritram akṛtam dharmyam kṛtamcānyaiḥ pravartayet |
Pravartayenna cādharmyam kṛtam cānyair-nivartayet. ||

77

38, *ll.* 19-21. Recommendation of Faith in God in Preference to Sacrifices, etc.

Bhakti literature is full of citations in support of this prescription. For example, there are the injunctions of the *Bhagavad-gīta*, which are merely illustrative :

Puruṣaḥ sa paraḥ Pārtha bhaktyā labhyastvanyayā I
Yasyāntasthāni bhūtāni yena sarvamidam tatam II
(VIII, 22)

Yānti devavratā devān pitṝn yānti pitṛvratāḥ I
Bhūtāni yānti bhutejyā yānti madyājinopi mām II (IX, 24)
Kṣipram bhavati dharmātmā s'asvat s'āntim nigacchati I
Kaunteya pratijānīhi na me bhaktaḥ praṇas'yati II (IX, 31)
Mām hi Pārtha vyapās'ritya yepi syuḥ pāpayonyaḥ I
Striyo vais'yas-tathā s'ūdrāstepi yānti parām gatim II
(IX, 32)

The *Bhaktiprakās'a* of *Vīramitrodaya* cites this *s'loka* (p. 3-4) :

Yat-karmabhir yat-tapasā jñāna-vairāgyatasca yat I
Yogena dānadharmeṇa s'reyobhiritarairapi II
Sarve mad-bhaktiyogena mad-bhakto labhateñjasā II

78

38, *ll.* 19-21. Gifts (Dāna) Preferred

Bṛhaspati (ed. Rangaswami, p. 231, s'l. 4) :

Tapo dharmaḥ kṛtayuge jñānam tretāyuge smṛtam I
Dvāpare adhvaraḥ proktas-tiṣye dānam dayā damah II

The last three prescriptions may be compared to the words with which the inscription of Heliodorus at Besnagar ends :

Sanskritised they read—*Trīṇi amṛtapadāni nayanti svargam : damaḥ, tyāgaḥ, apramādaḥ* (E. J. Rapson, *Ancient India*, 1914, p. 157).

See the praise of gifts (*dānapras'amsā*) in Hemādri's *Dānakhaṇḍa*, (ed. Benares, I, pp. 4-13).

79

38, *ll.* 4-5. AUTHORITATIVENESS OF A SMṚTI DUE TO ITS OWN MERIT

See the passage from Medhātithi in the note below.

The test of merit is harmony with Vedic injunction. Even in the case of *Manusmṛti* to which pre-eminent authority has been given in a famous passage of *Bṛhaspati* (ed. Rangaswami, p. 233, *sl.* 13):

> *Vedārtha-pratibaddhatvāt prāmāṇyam tu Manoḥ smṛtam* ।
> *Manvartha-viparītā tu yā smṛtiḥ sā na s'asyate* ॥

the grounds of its superiority are stated to be its reliable reproduction of the drift of the Vedas. This point is elaborated by Medhātithi in this comment on *Manusmṛti*, II, 6, thus:

"Now, as regards the work of Manu, what happened was that he got together pupils who had studied several Vedic texts, as also other Vedic scholars, and having heard from them the several texts, he compiled his work; and he has therefore clearly stated that Vedic texts are the sources of what he has written, and thereby established the trustworthy character of his work. Others who came after him performed the several duties relying upon Manu's own words, and did not try to trace his words to their source in the Vedas." (Dr. Gangānāth Jhā's Trn., I, p. 196).

80

38, *ll.* 5-8. SMṚTIS ENDLESS; RECOGNITION OF A MODERN SMṚTI (MEDHĀTITHI)

In commenting on *Manusmṛti*, II, 6, Medhātithi, and interpreting the word "*smṛti-s'īle*" in the verse, says as follows: (Dr. Ganganath Jha's Trn., vol. I, pp. 204-205):

"There can be no reasonable ground for enumerating the names of *smṛtis* (recollectors) as Manu, Viṣṇu, Yama, Angiras, and so forth. For we find that many such persons as Paiṭhīnasi, Baudhāyana, Pracetas and the rest are recognised by the wise

and learned as reliable *smārtas* (recollectors) and yet these names are not found in any of the lists (supplied by various *smṛtis*).

" What thus the words '*smṛtiśīle ca tadvidām*' mean is that 'when a person is found to be recognised and spoken of by all wise and learned persons as endowed with the said qualifications, and they also accept a certain work as really by that person,—the word of such a person (and of the work composed by him), even though proceeding from a human source, should be recognised as an authoritative source of the knowledge of *Dharma*. So that even at the present day, if there were a person possessed of the said qualifications, and he were to compose a work by reason of just those qualifications, then for later generations they would be accepted to be just as authoritative as the works of Manu and others. People of the present generation—who would be contemporaries of the said writer—would not derive their knowledge of *Dharma* from the words of such a writer, because the sources of information available to him would all be available to them also. Hence it is that until a teacher of the present day indicates the source from which he has derived a certain information, learned people do not accept his words as reliable. When, however, he has pointed out his source and his work has been accepted as authoritative, then at some future time, if the case of his work be found to be analogous to that of the *smṛti* rules, regarding *aṣṭaka* and other acts (whose basis in the Veda we of the present day can not find) it would be only right to infer its authoritative character from the fact of its being accepted by the wise and the learned (which fact could not be explained except on the basis of its being duly authoritative)."

The original passage is to be found on p. 64 of Mr. J. R. Gharpure's edition of Medhātithi and on vol. I, pp. 67-68 of Dr. Jha's edn.:

> *Ata eva smartṛ-pariganaṇā Manur-Viṣṇur-Yamo-Angirā iti nirmūlā. Tathā hi Paiṭhīnasi-Baudhāyana-Pracetaḥ-prabhṛtayaḥ śiṣṭair-evamrūpāssmaryante. Na ca pariganaṇāyam antarbhāvitāḥ. Sarvathā yamaviganena śiṣṭāḥ smaranti vadanti vā evam vidhaiḥ guṇair-yuktam.*

Tena caitat-praṇītam-iti tasya vākyam satyapi pauruṣeyatve dharme pramāṇam syāt iti. 'Smṛtis'īle ca tadvidām' ityasyārthaḥ.

Adyatve ya evam-vidhair-guṇair-yukta īdṛs'ena eva ca hetunā grantham upa-nibadhnīyāt sa uttartreṣām Manvādivat pramāṇī bhavet. Idanīntanānām tu yadeva tatra tasya bodhakāraṇam tadeva teṣām astīti na tad-vākyad avagatiḥ.

Idanīntano hi yāvanmūlam na dars'ayati tāvanna vidvāmsaḥ tadvākyam pramāṇayanti. Dars'ite tu mūle pramāṇīkṛte granthe kālantare yadi kathancit aṣṭakādi-mūla-tulyatā syāt, tadā teṣām s'iṣṭa-parigrahānyathānupapatyā tan-mūlānumānam yuktam.

81

38, *ll.* 21-24. THE DOCTRINE OF REPRESENTATION (PRATINIDHITVAM)

Two principles have by their liberal application helped greatly the development of *Dharmas'āstra.* These are technically known as *Atides'a* and *Pratinidhitvam.*

Atides'a may be described as the principle of extension of applicability by analogy or resemblance. Such extensions may be by analogy of (1) express or implied statement, *vacanātides'a,* (2) identity or similarity of nomenclature, *nāmātides'a,* (3) and indication of injunction, *codanālingatātides'a.*

As a general illustration of *atides'a,* Gadādhara mentions the application of what appears in one context to another, *ekatra s'rutasyānyatra sambandhaḥ* (*Vyutpatti-vāda*). *Vācaspatya* defines *atides'a* :—*Itaradharmasya itarasmin prayogāya ādes'aḥ.* Madhavācārya explains the principle thus: (*Jaiminīya-nyāya-māla-vistaraḥ,* VII, v, i, 1):

Prākṛtāt-karmaṇo yasmāt tat-samāneṣu karmasu |
Dharmopades'o yenasyāt sotides'a iti smṛtaḥ ||

The two principles of *atides'a* and *pratinidhitvam* are connected by doctrine and application.

Another familiar substitute is a fixed money payment for the baths and services, or penances (*kṛcchra*) prescribed for expiation.

In law, the most conspicuous example of the application of the principle is the validity of substitutes for sons of the body (*aurasa-putrāḥ*) in the son adopted (*dattaka*), bought (*krīta*) given by himself (*svayam-datta*) etc. A substitute when allowed is held to be identical with the original. This supposition or belief leads to the principle of identity, what is equal to the original for purposes of substitution or representation, being regarded as identical with its original. Thus came deductions of the identity of husband and wife, father and son, son and daughter, master and servant, owner and slave etc. The logical corollary to identity is common personality, and the *pratinidhi* principle leads to the legal concept of common personality between husband and wife and parent and son, with its implications and consequences in law.

The underlying idea in *pratinidhitvam* is the permissibility of the use of a substitute, in cases in which either the original cannot be secured or is rendered incompetent to officiate. The justification for the use of the subsitute is resemblance, real or apparent (*Tulyarūpatayā mukhyakāryā-kāritvārthe nidhīyamānatvam* iti *Nyāyakos'a*, p. 530). Thus, in a *vaidika* ceremony, in the absence of a real son, an adopted son is permitted to function. Or even other representatives are allowed in similar circumstances, as ruled by the *Skandapurāṇa* in the following *s'loka*;

Putraṃ ca vinayopteam bhagīnīm bhrātaram tathā ।
Eṣāmabhāva evānyaṃ brāhmaṇaṃ viniyojayet ॥

Or again, in case the article enjoined for use in a *vaidīka* ceremony is unavailable, a substitute may be used, as indicated in *S'rautasūtras*, *e.g.* *Kātyāyana-s'rautasūtra*, I, 4. Thus the use of gold (*hiraṇya*), *taṇḍula* (rice) as *pratinidhi* (substitute) for clarified butter (*ājya*) in sacrifices (*yajña*) or *dāna* (gifts) is well-known. The following illustrate the *pratinidhi* principle in operation.

Bṛhaspati (ed. Rangaswami, p. 208, *sl.* 78) :

Ājyam vinā yathā tailam sadbhiḥ pratinidhiḥ smṛtam ।
Tathaikādas'a putrāstu putrikaurasayorvinā॥
Yadyekajātā bahavo bhrātarastu sahodarāḥ ।
Ekasyāpi sute jāte sarve te putriṇaḥ smṛtāḥ ॥
Bahvīnām ekapatnīnām eṣa eva vidhiḥ smṛtaḥ ।
Ekā cet putriṇī tāsām sarvāsām piṇḍadastu saḥ.॥

S'atapatha-Brāhmaṇa (Trn. Eggeling, *S.B.E.*, XLIV, 187) : "The father is the same as the son and the son the same as the father".

Vājasaneya-Brāhamaṇa (cited by Kullūka, IX, 45)

Ardho ha vā eṣa ātmanaḥ tasmād-yad-jāyām na vindate naitāvat prajāyate asravo hi tāvad bhavati atha yadaiva jāyām vindate athaprajāyate ta hi sarvo bhavati, tathā caitad-vedavido viprā vadanti yo bhartā saiva bhāryā smṛtā.

Manusmṛti, IX, 45—46 :

Etāvāneva puruṣo yajjāyātma prajeti ha ।
Viprāh prāhuḥ tathā caitadyo bhartā sa smṛtāṅganā ॥
Na niṣkraya-visargābhyām bhartur-bhāryā vimucyate ।
Evam dharmam vijānīmaḥ prāk-prajāpati-nirmitam.॥

Medhātithi on *Manu*, IX, 45 :

Yasya bhāryā tasyāpatyam : *yasmāt bhāryāyāḥ bhartuscaikatvam.*

The enormity of a dispute between father and son is due to the principle of their identity (*Manusmṛti*, III, 159 ; *Gautama*, XV, 19.)

The principle is illustrated in the anonymous *s'loka* cited by the *Mitākṣarā* (II, 32) :

Guroḥ s'iṣye pituḥ putre dampatyoḥ svāmibhṛtyayoḥ ।
Virodhe tu mithasteṣām vyavahāro na siddhyati ॥

i.e., "a suit will not lie between a preceptor and a pupil, a father and a son, between husband and wife, and between master and servant, even if they are on inimical terms." But, as the strict

application of this principle will lead to injustice and leave aggrieved sons, wives and servants without legal redress, the *Mitākṣarā* indicates the pious character of the injunction and the obligation of the king to hear complaints from such persons, if, after they are advised to compose their differences, they insist on being heard :

> '*Dṛṣṭādṛṣṭayoḥ s'reyaskaro na bhavati gurvādibhir-vyavahāra' iti prathamam s'iṣyādayo nivāraṇīyāḥ rājñā sasabhyena iti 'guroḥ s'iṣye' ityādi s'lokasya tātparyaḥ. Atyanta-nirbandhe tu s'iṣyādīnām apyuktarītyā pravartanīyo vyavahāraḥ.*

The excepted cases are those in which a father squanders property derived from the grandfather, the husband squanders the *strīdhanam*, and a teacher chastises a pupil more severely than allowed by law.

The principle of representation or substitution gave rise to the recognition of actions by 'near friends' on behalf of minors, women and afflicted or disabled persons, and of agents (*niyuktāḥ*), who were heard, as if they were principals, but with the distinct understanding that, just as in religious sacrifices, the spiritual merit accrues not to the officiating priest but to the person on whose behalf he performs the ceremony, so in the case of suits, success and failure go to the principals and not to the agents. Parents, brothers and sons could plead or act in suits, even without specific authorisation, which was required only for strangers. The interposition of unauthorised persons, claiming to act as agents, is punishable except in the above cases of near kin: vide *Bṛhaspati-smṛti* (ed. Rangaswami), I, 137-138 ; *Kātyāyana*, (ed. Kane), v. 91, and *Bṛhaspati*, I, 171-2. The right of representation is denied in cases of serious crime, when the accused should plead in person : e.g. *Kātyāyana*, vv. 93-95. See Jīmūtavāhana's *Vyavahāramātṛkā*, ed. Ashustosh Mookerji, pp. 287-288, and Varadarāja's *Vyavahāranirṇaya*, ed. Rangaswami, pp. 33-35.

The *niyogakṛt* is the parent of the later *mukhtyār* and *vakīl*.

82

39, *ll.* 9-10. CONDEMNATION OF S'ŪDRA MENDICANCY AND CELIBACY

See *Ancient Indian Polity*, pp. 40-41.

The rule of Kauṭilya imposing a severe punishment on those who become ascetics without providing for their wives and children, or who cause women to enter the ascetic order, is manifestly aimed against S'ūdras, who, under the influence of Buddhism, were entering the monastic order :

Putradāramapratividhāya pravrajataḥ pūrvasāhasadaṇḍaḥ ; striyam ca pravrājayaqtaḥ . . . Vānaprasthādanyaḥ pravrajitabhāvaḥ . . . nāsya janapadam upanives'eta (p. 48).

The ascetic was both a celibate and a mendicant.

83

39, *ll.* 10. MAGNIFICATION OF THE BRĀHMAṆA

Manusmṛti enjoins due reverence to Brāhmaṇas in IV, 39, 52, 58, 135-136, 142, 162. The king is degraded by showing them irreverence, X, 43. Dr. Jayaswal held that the composition of the present *Manusmṛti* (according to him) in the age of Puṣyamitra is responsible for several claims put forward on behalf of the Brāhmaṇa ; *e.g.*, He is Īsa in the sense of the ruler of the whole world, IX, 245 ; he is Īs'vara (Ruler), for the protection of Dharma, I, 99 ; he is lord of everything (*sarvasyādhipati*) VIII, 37 ; and he is entitled to all that exists (I, 100). See Jayaswal, *Manu and Yājñavalkya*, passim, and particularly, pp. 102-104.

84

39, *ll.* 18-23. PERFORMANCE OF AS'VAMEDHA BY KINGS OF DUBIOUS CASTE

See Note below on the similar references on p. 54 of the text.

The Bhāras'iva *As'vamedhas* are referred to in the Dhammak and Siwani copper-plate inscriptions of Pravarasena II (Fleet, *Gupta*

Inscriptions, pp. 235-249). Rudrasena I of the Vākāṭaka dynasty is referred to as the daughter's son of "the illustrious Bhavanāga the Mahārāja of the Bhāraśivas . . . who were sprinkled with the pure water of the Bhāgirathī that had been obtained by their valour, and who performed ablutions after the celebration of ten Aśvamedha sacrifices" (p. 241). The translation is Fleet's and has been followed by students of Indian history, and the Bhāraśiva king is credited with the performances of a record number of Aśvamedha sacrifices. The exact expressions used are:

Parākramādhigata-Bhāgīrathyamalajala-mūrddhābhiṣiktānām Daśāśvamedhā-vabhṛtasnātānām, Bhāraśivānām, Mahārāja Bhavanāga dauhitrasya

They appear to me to mean only that Bhavanāga had a lustral bath, after the performance of an Aśvamedha at the famous Daśāsvamedha *ghat* on the Ganges at Benares, whose sanctity is supposed to be derived from the performance there of Aśvamedha sacrifices by Brahma himself. It also means that he had conquered by his prowess (*parākrama*) the banks of the Ganges, probably Benares.

85

39, *ll.* 20-23. SAMUDRAGUPTA'S RELATION TO AN OUTCASTE CLAN

The mother of Samudragupta was a princess of the Licchavi clan, which, though famous in the days of the Buddha, was regarded as an outcaste clan in the Gupta epoch. Thus *Manusmṛti* classes them with other degraded castes of mixed origin;

Jhallo mallaśca rājanyāt vrātyal-licchivireva ca ।
Naṭasca karaṇascaiva khaso dravida eva ca ॥

The *Manusmṛti* is *pre*-Gupta on other evidence, and this origin ascribed to the powerful patrons of the Brahmanical revival in Magadha could not have been stated publicly during the hey-day of the Gupta empire.

86

39, *ll.* 23-24. HELIODORUS THE VAIṢṆAVA GREEK

A column discovered at Besnagar near Bhilsa, in the extreme south of the Gwalior state, has the following inscription. The column must have been a flag-staff (*dvajastambha*) of a Viṣṇu temple and been surmounted by the figure of Garuḍa. The text of the inscription reproduced here follows the reconstruction by Prof. E. J. Rapson (*Ancient India*, p. 157). See also *J.R.A.S.*, 1909, and 1910.

Devadevasa Vāsudevasa Garuḍadvaji ayam kārite ia Heliodoreṇa Bhāgavatena, Diyasa putreṇa, Takṣas'ilākena, Yoṇa-dūtena, āgatena Mahārājasa Antalikitasa upantā sakāsam rājño Kās'iputrasa Bhāgabhadrasa trātārasa vasena catudaseṃna rājena vadhamānasa trīṇi amuta-padani—su anuṭhitāni nayanati saga dama cāga apramāda.

TRANSLATION

This Garuḍa column of Vāsudeva, the god of gods, was erected here by Heliodorus, a worshipper of Viṣṇu, the son of Dion, and an inhabitant of Takṣas'ila, who came as Greek ambassador from the Great King Antialcidas to King Kās'iputra Bhāgabhadra, the Saviour, then reigning prosperously in the fourteenth year of his kingship.

Three immortal precepts . . . when practised lead to Heaven: self-restraint, charity, and conscientiousness.

87

39, *ll.* 25-26. THE HUNS AS WORSHIPPERS OF VIṢṆU

On the basis of the inscriptions of Mātṛviṣṇu and Dhanyaviṣṇu at Eran in Eastern Malwa, bearing the date 165 of the Gupta era, (*i.e.* A.D. 484-585), the late Mr. R. D. Banerji (*History of India*, p. 189) states that the Huns were worshippers of Viṣṇu. The

brothers dedicated a *Garuda-dhvaja i.e.* a flag-staff surmounted by the figure of Garuḍa, (Inscription No 19, pp. 88-90, J. F. Fleet, *Gupta Inscriptions, Corpus Inscriptionum Indicarum*, III). In the inscription, the reigning king is referred to as Budhagupta. In a second inscription incised on the base of a colossal stone image of Viṣṇu as *Bhūvarāha* (ibid., No. 36, pp. 158-161), the reigning king is referred to as Toramāṇa, and the inscription is dated in the first year of his reign. The object of the inscription is to record the building of the temple in which the image stands by Dhanyaviṣṇu, the brother of Mātṛviṣṇu. Both brothers claim to have performed Vedic sacrifices, studied the scriptures, and to have been Brāhamaṇarṣi (*Svakarmābhiratasya kratu-yājinodhīta-svādhyāyasya viprarṣeḥ.*) They claim to belong to the *Maitrāyanīya-S'ākha* (*Maitreyāṇi vṛṣabhasya).* The inscription on the flag staff ends with the pious Brahmaṇical benediction—*svastyastu go-brāhmaṇa-purogābhya sarva prajābhya iti.*

88

40, *ll.* 9-10. THE EFFECTS OF THE SPREAD OF MĪMĀMSA ON BUDDHISM

The assault of Pūrva-Mīmāmsa on Buddhism was direct. Kumārila indicted Buddhism as opposed to the Veda, though he admitted (in order to take away any claim to originality of thought by the Buddhist) that the Buddhist systems owed their inspiration to the Upaniṣads. The assault on addiction to objects of sensual gratification is common to all serious thought, Upaniṣadic or Buddhist. Kumārila is definitely of the opinion that the *Mīmāmsa-sūtras* of Jaimini contain criticisms of the views of Buddhists. This is his personal view, and should not weigh unduly in an estimation (as it has done) of the date of the *Mīmāmsa-sūtras.* He was obsessed by his dislike of Buddhism, and might attribute to the founder of his school an equal dislike, overlooking the possibility of his founder being *ante-Buddha.* Both Dr. A. B. Keith and Mr. P. V. Kane have affirmed the absence of any explicit

reference to the Buddha or his doctrines in the *sūtras*. Prof. G. V. Devasthali in a recent paper (*Annals of the B.O.R.I.*, 1940, Vol. XXII) asserts that the only mention of the word *Buddha* in the expression of *Buddha-sāstrāt*, which occurs, is not to the founder of Buddhism but is used in the sense of 'one who knows' (*Mimāmsa-sūtra*, I, 2, 33.) He concludes that Jaimini lived before the Buddha, and that his date can not be later than 500 B.C.

But, this does not take away the fact that the Mīmāmsa stood for the defence of the ritualism of the Veda for which the Buddhist had dislike. It "welcomes all philosophical views so long as as they do not injure its central theme, *viz.*, the transcendent importance of *Dharma* interpreted in the ritualistic sense. . . . The Veda is acknowledged as authoritative and its validity is established against the Buddhists, who dispute it, and the seekers of knowledge who subordinate Karma to Jñāna. . . The Mimamsa accepts a realistic view of the world against the Buddhists." (Radhakrishnan, *Indian Philosophy* I, p. 375).

The Buddhist is definitely attacked in Kumārila's *S'lokavārtika*, II, 169-172 :

" 169. The falsity of the scriptures of the Buddha are proved by the fact of their being due to human agency. Their character (of falsity) could not belong to the Veda, because in its case there is no author (human agency).

171-2. The assertions of the Buddha etc., that were brought forward by the atheists as examples to prove the unauthenticity of the Veda, are shown here to be non-concomitant. Because it has been shown above that the effects of these (Vedic assertions) are correct."

The identification of the Buddhist and the Atheist is old. Vasiṣṭha lumps the atheist and the man who becomes an out-caste by neglecting his duties (*Karmacaṇḍāla*) and the latter is manifestly the Buddhist. Manu, (IX, 224-226) aims at Buddhists when he condemns "S'ūdras in the guise of Brāhmaṇas-(*s'ūdrāmsca dvijalinginaḥ*), atheists (*pās'aṇḍas*) and persons who abjure duty (*vikarmasthāḥ*). Manu girds at Buddhists again in

XII, 95, where they are characterised (correctly) as *Veda-bāhyāḥ*. The *Viṣṇupurāṇa* lumps the village-mendicant (monk) and the Jaina ascetic (*Nirgrantho*) as full of sins (*bahudoṣo*), and the allusion is to the Buddhist. The much later *Ṣaṭ-trimsanmata* (post-Kumārila) is even more condemnatory and rules that the contaminating touch of the Buddhist can be removed only by a bath with clothes on (p. 174):

Buddhān pās'upatān jainān lokāyatika-kāpilān |
Vikarmasthān dvijān spṛṣṭvā sacelo jalamāvis'et. ||

The restoration of the old *Karma-mārga*, which was the aim of Kumārila and his group, meant naturally hostility to Buddhism. The fantastic stories of a persecution of Buddhists organized under a (mythical) king by Kumārila are the creations of the putrid imagination of later hagiologists, who treated of the life of Sañkara. See Note lower down on the animus against the learned S'ūdra.

89

40, *ll.* 10-11. S'AṄKARA'S INFLUENCE IN THE DISAPPEARANCE OF BUDDHISM

See Radhakrishnan, *Indian Philosophy*, II, pp. 470-473, and 496-497. Sir S. Radhakrishnan points out that "it is said, not without truth, that Brahmanism killed Buddhism by a fraternal embrace. We have seen already how Brahmanism silently assimilated many Buddhist practices, condemned animal sacrifices, accepted Buddha as an avatar of Viṣṇu, and thus absorbed the best elements of the Buddhist faith. Though the accidents of its first immediate form disappeared, Buddhism became, partly through S'aṁkara's influence, a vital force in the life of the country. Buddhism created in the region of thought a certain atmosphere from which no mind could escape, and it undoubtedly exercised a far-reaching influence on S'aṁkara's mind. An Indian tradition opposed of S'aṁkara holds that he is a Buddhist in disguise and his māyā-vāda but crypto-Buddhism. . . . Yāmunācārya, the spiritual grand-father of Rāmānuja is of the same opinion which Rāmānuja

repeats. Vijñanabhikṣu, commenting on the Sāṁkhya system, observes: "There is not a single Brahmasūtra in which our bondage is declared to be due to mere ignorance. As to the novel theory of Māyā propounded by persons calling themselves Vedāntists, it is only a species of the subjective idealism of the Buddhists. The theory is not a tenet of the Vedanta.". . . These estimates imply that S'aṁkara incorporated certain Buddhist elements such as the doctrine of māyā and monasticism into the Vedanta philosophy." In a sense it may therefore be said that S'aṁkara stole the Buddhists' thunder. That the "borrowing" is perhaps not direct but due to both Buddhist and Advaitic thought, being directly descended from the thought of the Upaniṣads, does not alter the effect on the displacement of Buddhist by the neo-Brahmanical, *i.e.* Vedantic thought. The personal orthodoxy of S'aṁkara will have given point to the change. "There are similarities between the views of Buddhism and the Advaita Vedanta."

The Buddha had meanwhile been accepted as an avatar of Viṣṇu. In some traditions he takes the place of Īs'vara (*i. e.* S'iva) who is made to say (in the *Padmapurāṇa* Uttarakhanda, ch. 236) that in the form of a Brāhmaṇa (?) he had himself declared in the Kaliyuga the false doctrine of Māyāvāda. The implication of the acceptance of the Buddha as an avatar of Viṣṇu is that he re-appears as the champion of Vedic *Dharma.* That there is no incongruity in the legend will be manifest to those who remember that the Buddha lived and died a Hindu, and that the belief that he was opposed to the Vedas is not correct.

90

40, *ll.* 27-28. DEVALA'S CLAIM TO SUPERSEDE OTHER SMṚTIS

He ends his allocution on purifactory rites for the restoration of the status of abducted women etc. with this declaration:

> *Prāyascittam samākyātam yathoktam Devalena tu* ।
> *Itareṣām Ṛṣīnām ca nānyathā vākyam arhata* ॥

91

41, *ll.* 1-16. DIGESTS UNDER ROYAL AUTHORSHIP OR PATRONAGE

King Bhoja of Dhāra (Dhāres'vara Bhojadeva, first half of the eleventh century A. D.) wrote many works among which the best known to *smārtas* is his *Bhūpāla-kṛtya-samuccaya*, a digest on *Dharms'āstra* from which citations occur in later *nibandhas*. The *Mitākṣarā* cites his views, but the *Kalpataru* makes no reference to him at all. His work is completely lost. See Mr. P. V. Kane's article on Bhojadeva in *J.B.B.R.A.S.*, 1925, pp. 223-224.

Gopāla is now established as the author of the *Kāmadhenu*, another lost digest, not only by the mention of it by Caṇḍes'vara (Kane, *op. cit.*, p. 295) but by an express declaration by Lakṣmīdhara in the verses introducing the *Kṛtya-kalpataru*. He is spoken as a "friend" (*vayasya*) of Lakṣmīdhara and probably belonged to the same court. For Vijñānes'vara, Aparārka and Lakṣmīdhara, see my papers in the *Madras Law Journal Golden Jubilee Volume* (1941) on LAKṢMĪDHARA AND THE KṚTYAKALPATARU and the KṚTYAKALPATARU AND VIJÑĀNES'VARA *passim*.

The patron of Hemādri was Mahādeva, the Yādava king of Devagiri.

92

41, *ll.* 14 *ff*. DHARMAS'ĀSTRA IN THE MUSALMAN PERIOD

Kullūka, the commentator on *Manusmṛti* lived in Benares about A.D. 1250 (according to Mr. Kane, *op. cit.*, p. 363), while it was in the area under the Delhi Sultanate. Caṇḍes'vara (c. A.D. 1300) was minister to a feudatory of the Sultan of Delhi. S'rīdatta, author of the *Ācārādars'a*, wrote in Mithila a little before Caṇḍes'vara. (Kane, p. 365). Harinātha, author of *S'mṛtisāra*, a digest, which has not yet been printed, wrote in Mithila (?) a little after Caṇḍes'vara. Vis'ves'vara Bhaṭṭa, the author of the *Subodhinī* and the real author of the digest *Madanapārijāta*, was probably a Telugu Brāhamaṇa, judging from his father's name Peḍibhaṭṭa,

who wrote in the court of Madanapāla the chief of Kāṣṭhā, a little to the north of Delhi, in the days of Sultan Firuz Shak of the Tughlakh dynasty. Madanasimha, the author of the *Madanaratna*, another unprinted digest, wrote from near Delhi early in the fifteenth century. S'ūlapāṇi and Raghunandana in Bengal wrote when it was under the Muhammadans. So did Vācaspati Mis'ra (author of the famous digest, *Cintāmaṇi*), who wrote when the area in which he lived was under the sphere of the influence of the Sultans of Jaunpur. Dalapati, the author of the digest *Nṛsimha-prasāda* wrote under the patronage of a Sultan of Ahmadnagar (c. 1500). The Bhaṭṭa family of Benares (which produced many writers on *Dharmas'āstra*, like Nārāyaṇa Bhaṭṭa, the author of *Tristhalīsetu* and *Prayogaratna*, Kamalākara, Nilakaṇṭha and Gāgābhaṭṭa) wrote at Benares in the heyday of Mughal rule. So did the not less famous family of the Kās'ī *Dharmādhikārins*, to which Nandapaṇḍita belonged. Mitramis'ra wrote in the reign of Jahangir and Todarmal in that of Akbar. Anantadeva, the author of the *Smṛti-kaustubha* wrote in the reign of Aurangzebe. So did the famous Nāgoji Bhaṭṭa under the aegis of a small chieftain near Allahabad, in the last days of Aurangzebe. In the illustrations the names of those who wrote under independent Hindu kingdoms in the Musalman period are not reckoned.

93

42, *ll.* 7-10. DVAITA-NIRṆAYA

Dvaita-nirṇaya is a special form of composition. It came into vogue in the fifteenth century. The aim of the writers of this type of *Smārta* work was to settle, after canvassing apparently opposed authorities, controverted topics in law or usage. It necessitates a mastery of *Dharmas'āstra* and *Mīmāmsa*. Works on it could be in prose or verse. The best known of these are the *Dvaitanirṇaya* of Vācaspati Mis'ra (c. 1450), *Dvaitaviveka* of Vardhamāna (c. 1500), and three *Dvaitanirṇayas* by three members of the Bhaṭṭa family of Benares, S'aṅkara and his son Dāmodara, and his grandson Bhānu (c. 1580 to 1620).

94

42, *ll.* 19-27. THE SUBSTITUTES FOR THE PARIṢAD IN DHARMA-VYAVASTHĀ

In the Gupta epoch the *vinaya-sthāpaka* took the place of the *pariṣad*. In the *S'ukranīti*, the *Paṇḍita* is enjoined "to study the moral life obtaining in society in ancient and modern times which have been mentioned in the codes, which are now opposed and which go against the customs of the people, and to advise the king as to which of these are efficacious for this world and the next." He is a legal adviser. (*S'ukranīti* II, vv. 200-203.)

95

43, *ll.* 26-27. MEDHĀTITHI'S REPUDIATION OF THE KING'S POWER TO MAKE A LAW IN TRANSGRESSION OF DHARMA

The opinion of Medhātithi is thus expressed in his comment on *Manusmṛti*, VIII, 13 :

> *Tasmād-dharmam yamiṣṭeṣu sa vyavasyen-narādhipaḥ* ।
> *Aniṣṭaṃ cāpyaniṣṭeṣu tam dharmam na vicālayet* ॥

i. e., the *dharma* of the king in favour of some and against others should not be transgressed.

Medhātithi's explanation is that *in the course of business and in consonance with dharma and custom* the king may issue edicts which cannot be transgressed. As illustrations of such edicts or proclamations, Medhātithi gives such notifications as :

'*today, the city should observe a holiday,*'
'*all men should attend a marriage in the minister's house,*'
'*no animals shall be slaughtered today by the soldiers,*'
'*no birds shall be caught for so many days,*'
'*for so many days dancing girls shall be entertained by the wealthy men*' (dancing girls being state slaves).

"When such decrees are issued by the beat of the drum, they should not be disobeyed. But the king has no power over the

ordinances relating to religious practices or *dharma*, nor on the rules of castes and stages of life, because any change of them will be contrary to *smṛti* texts. Accordingly the text under interpretation (*i. e.*, Manu, VII, 13) will apply in cases where the *smṛti* texts are not offended against."

Yataḥ sarva tejomayo rājā tasmāt hetoḥ mantri-purohiteṣu kāryagatyā 'dharmam' kāryāvasthām s'āstrācārāviruddhām nis'citya stāpayet. Sā tādṛs'ī rājājñā nātikramaṇīya. 'Adya pure sarvaiḥ utsavaḥ kartavyaḥ,' 'Mantri-gehe vivāho vartate, tatra sarvaiḥ sannidhātavyam,' 'Pas'avo nādya sainikaiḥ hantavyā, na s'akunayo bandhayitavyaḥ,' 'Nartikā dhanikaiḥ āradhaniyāḥ'. Evam vidho atradharmaḥ paṭahaghoṣādinā rājñā ādiṣṭo nātikramaṇīyā. Na tu agnihotrādi-dharma-vyavasthāyai varṇas'rimiṇām rājā prabhavati, smṛtyantara-virodha-prasaṅgāt. Avirodhe ca asmin viṣaye vacanasya arthatvāt.

96

43, *ll.* 28-30. KING'S ALLEGED POWER TO MAKE LAWS, OF HIS OWN AUTHORITY

The topic is of great value, as the alleged existence of the power is *now* relied on to support social legislation. In the adjudication of cases, four kinds of rules may be relied on. These are usually taken as *dharma*, *vyavahāra*, *caritra*, and *rājas'āsanam*. What is the relative force of these between themselves? They are interpreted as *Smṛti* law, secular law custom and edicts of the king. Secular law is sometimes identified with *Arthas'āstra* rule. (*e.g.* Jayaswal, *Manu and Yājñavalkya*, pp. 13-16). The enumeration is identical in Kauṭilya, Yājñavalkya, and Nārada:

Dharmasca vyavahārasca caritram rājas'āsanam ।
Vivādārthas-catuṣpādo. . . .

The difference comes in the last quarter (*pāda*); Kauṭilya has (p. 150).

Pascimaḥ pūrvabādhakaḥ (*i.e.* each following supersedes the preceding),while Nārada rules (I, 10):

" *Uttaraḥ pūrvabādhakaḥ* " (*i.e.* what precedes over-rides what follow)."

In a consideration of the place of the royal edict (*Rājas'āsanam*) it would seem to be *last* in the list of applicable authorities, in the order of priority, according to *Dharmas'āstra* and the *first* according to *Arthas'āstra*. It would be an obvious interpretation to take the former as an extreme claim of the sacerdotalist and the latter of the regalist. But, the interpretation is barred, if one realises that Kauṭilya, if studied with care, is not in opposition to *Dharmas'āstra*, and that, on the other hand, his rules conform to it. S'ukra, who is also an *Arthas'āstra* authority, gives the king power to declare the law, but it *must* be in accordance with *Dharma* and usage. He can not make a *new* law. The royal edict is merely declaratory, and not innovative. This is specially indicated by Kātyāyana (*v*. 38):

Nyāya-s'āstra-avirodhena des'a-dṛiṣṭes-tathaiva ca ।
Yad-dharmaṁ stāpayet rājā nyāyyam tat rājas'āsanam ॥

The edict has to conform to *dharma*, *nyāya* and *desācāra* if it is to be operative. Yājñavalkya refers to the edict as '*dharma* as declared by the king' (*dharmo rājakṛtasya tat*). That the *Arthas'āstra* can not supersede *Dharmas'āstra* in *any* circumstances is declared in *smṛtis*. Thus, Yājñavalkya declares that *Dharmas'āstra* is more powerful (*i.e.*, can over-ride) *Arthas'āstra* (II, 21):

Arthas'āstrāttu balavat dharmas'āstram iti sthitiḥ ।

The reference to *Arthas'āstrā* is held by the *Mitākṣarā* to refer only to the *Artha* content of *Dharmas'āstra*. See *Ancient Indian Polity*, pp. 164-170.

Kauṭilya's rule of precedence will mean, under this interpretation, that the order of preference placing edicts, usages, *vyavahāra* (*artha*) and *dharma* as operative in sequence, simply implies that as every one of these should be in conformity with *dharmas'astra*, and the king is enjoined to deal with causes in conformity with *Dharmas'āstra* (*dharmas'āstrānusāreṇa*, Yājñavalkya, II, 1), the order

which the courts will naturally follow proceeds from what is explicitly stated in an edict and discoverable custom to the *smṛti* rules, which require skilled interpretation. The explanation will reconcile the contradiction, apparent, but not real. That Kauṭilya was fully conversant with the rules of interpretation, which were codified probably even before his time by the followers of *Mīmāmsā* will be evident to his readers. Further, lower down in the same passage and context, Kauṭilya lays down that *Artha* should be interpreted in term of *Dharmas'āstra* (p. 150):

> *Samsthāya dharmas'āstreṇa s'āstram vā vyāvahārikam* ।
> *Yasmin-narthe virudhyeta dharmeṇa artham vinis'cayet* ॥

He also indicates the order of action of a successful ruler in regard to the four (p. 150):

> *Anu-s'āsad-dhi dharmeṇa vyavahāreṇa samsthayā* ।
> *Nyāyena ca caturthena caturantām mahīm jayet* ॥

That rules of logic should be applied as well of intelligent, interpretation for maintaining the integrity of *Dharmas'āstra*, and that they should not be read literally and unintelligently is laid down by Bṛhaspati (*Vyav.*, II, 111):

> *Kevalam s'āstramās'ritya na kartavyo hi nirṇayaḥ* ।
> *Yukti-hīna-vicāre tu dharma-hāniḥ prajāyate* ॥

The *s'āstram* in the above s'loka is obviously, from the context *Dharmas'āstra.*

The King is under, not above the Law

This will be clear from *Manusmṛti* (VII, 28) which places Daṇḍa above the king:

> *Daṇḍo hi sumahat-tejo durdharascākṛtātmabhiḥ* ।
> *Dharmāt-vicalitam hanti nṛpameva sa-bāndhavam* ॥

Kauṭilya, p. 226, lays down that the court can punish even the king as it would punish a subject:

Uttamāparamadhyatvam pradeṣṭā daṇḍakarmaṇi ।
Rājñasca prakṛtīnām ca kalpayet-antarānvitaḥ ॥

In criminal cases the king himself was deemed a party as prosecutor, and in the case of state offences judgment could be given against him.

The exaltation of *Dharmas'āstra* as *Daṇḍanīti* is the purpose of chapter 69 of the *S'āntiparva* of the *Mahābhārata*, where occurs the famous expression *Rājā kālasya kāraṇam*, which has been incorrectly apprehended and used to support a claim for a residual power in a king, on account of his personal responsibility, to change law and usage in harmony with the time-spirit. (*vide* Note 61 *supra*).

97

43, *ll.* 29-33. POWER OF THE KING TO CHANGE LAW OR USAGE. THE ALLEGED CASE OF AS'OKA

The changes which As'oka is supposed to have made are the prohibition of the slaughter of animals, including the killing of animals at Vedic sacrifices, the prohibition of burning of chaff, and castration of animals, and changes in criminal law such as pardoning criminals on certain anniversaries. These are dealt with below *seriatim* in succeeding Notes.

A Note above (95) which cites Medhātithi's views on the alleged power of the king to change law, shows that among the examples of permissible proclamations, which he gives, come the prohibition of the killing of animals and snaring of birds on certain days, as well as the prescription of festivities, of which examples are afforded by As'oka's edicts.

98

44, *ll.* 4-12. ALLEGED CHANGE BY THE MAURYAS IN THE LAW OF THEFT

Daṇḍin mentions in the *Das'akumāracarita* (II, 44) that the Mauryas granted this boon to merchants that if they were found to

be in possession of stolen property, capital pnnishment should be excused in their case :

> " *Maurya-datta eṣa varo vaṇijām, īdṛs'eṣu aparādheṣu nāsti as'ubhīh abhiyogaḥ*"

The manifest thief was punished with death (*Manusmṛit*, IX, 269) but one who was merely found in possession of stolen property, should not be put to death. " He who is taken with the stolen goods, and the implements of burglary, may without hesitation may be caused to be slain."

> *Na hoḍena vinā cauram ghātayet dhārmiko nṛpaḥ* |
> *Sahoḍam sopakaraṇaṃ, ghātayet avicārayan* ||

Thus, under the old law, which is given by Manu, one who is only found with stolen property in his possession, and is obviously not the burglar, cannot be sentenced to death or summarily killed.

The so-called *vara* (favour) of the Mauryas is nothing more than what Manu allows under the old law. If the Mauryas had declared it by edict, as implied by Daṇḍin, it was only a case of declaring the existing law, not changing it.

Further in dealing with cases of theft, as in other cases, the *Dharmas'āstra* asks the circumstances to be taken into account. Thus the theft of agricultural implements, of arms, and of medicines should be dealt with only after the king has taken into account the time of the offence and the use to which the stolen object was put (*Manusmṛti*, IX, 293). Traders get in the course of business property which might have been stolen. It would be obviously against the spirit of the *Dharmas'āstra* to punish such persons with the death penalty. The example only proves that the Mauryas merely enforced *Dharmas'āstra*, and did not change it.

99

44, *ll.* 19-23. Respite from Sentence for Three Days in the Case of Prisoners Sentenced to Death

As'oka states in Pillar Edict IV : " Forasmuch as it is desirable that uniformity should exist in administration and in

penal procedure, my orders extend so far, namely: 'To prisoners convicted and sentenced to death a respite of three days is granted by me.' During this interval the relatives of some atleast of the condemned men will invite them to deep meditation, hoping to save their lives, or, if that may not be so, they will present votive offerings and undergo fasts to promote the pious meditations of those about to die.

For, my desire is that the condemned, even during their imprisonment, may gain the next world, and that among the people pious practices of various kinds may grow, along with self-restraint and generous liberality." (Vincent Smith's trn. *vide* his *As'oka,* 1901, pp. 149-150).

Dr. D. R. Bhandarkar (*As'oka*, 2nd edn., 1932, p. 342) offers a somewhat different rendering, which is given below:

"For this is desirable—what?—uniformity of administration and uniformity of punishment. And even so far goes my order: to men who are bound with fetters, on whom sentence has been passed, and who have been condemned to death, have I granted three days as something rightfully and exclusively their own. (In that interval) (their) relatives will indeed propitiate some (of the *Rajukas*) in order to grant their life; and to propitiate Death, they (*i.e.* the convicts) will give alms and observe fasts pertaining to the next world. For my desire is that even when the time (for their living) has expired they may win the next world and that manifold pious practices, self-restraint and liberality may thus grow among the people."

100

44, *ll.* 21-27. ROYAL PARDON

Manu takes away from the King the power to annul a sentence pronounced after a due enquiry in court (IX, 233):

Tīritam cānus'iṣṭam ca yatra kvacana udbhavet ।
Kṛtam tad-dharmato vidyāt na tad bhūyo nivartayet ॥

Manu lays down that the guilt of the killer of a Brāhmaṇa, goes to him who eats his food, the guilt of an adulterous wife

falls on her negligent husband, the sinning pupil's and sacrificer's guilt on the preceptor and teacher, and *the thief's sin on the king who pardons him.*

Failure to punish the manifest thief is for the king a sin. When a thief, as laid down by the law (VIII, 314) approaches the king with streaming locks and confesses his guilt, he is free from sin whether he be sentenced or let off, "but the king, if he punishes not, takes upon himself the guilt of the thief." (VIII, 317).

Even if he wishes to do so the king can not let off an old offender. (*Viṣṇusmṛti*, III, 93).

101

44, *ll.* 29. PROHIBITION OF VEDIC SACRIFICES

Asoka is usually held to have interdicted the performance of Vedic sacrifices throughout his kingdom, and thereby made a violent change in the practice and religious obligations of the Brahmanical community in his kingdom. The relevant passages in, the edicts are these: (1) "Here no animal may be slaughtered" (Rock Edict I); (2) by reason of Asoka's proclamations, the cessation of the slaughter of living creatures is growing (Rock Edict IV); (3) "Favours have been conferred by me on quadrupeds and bipeds, birds and aquatic animals, even up to the boon of life." (Pillar Edict II); (4) prohibition of the wanton destruction of certain named animals, (the eating of which is prohibited by custom) and acts of cruelty on certain named days of the month (Pillar Edict V, 26th year of his consecration as king)! (5) "The growth of *Dharma* (in the kingdom) has been effected by regulation of *Dharma* and by exhortation, and of the two regulation is of minor account . . . such as the prohibition of the slaughter of such and such animals and other regulations of the kind." (Pillar Edict VII).

Among these, the word "here" in clause 1 above is capable of interpretation as "here in the capital" or "in the Palace" (Bhandarkar, *op. cit.*, p. 298) "'*iha*' has been taken by some to mean 'here, on this earth' and by others as 'here' *i.e.* in Pāṭaliputra. But it had rather be taken to denote his 'palace or royal

establishment' because all other items mentioned in this edict are connected either with either As'oka personally or his royal household."

The belief that As'oka created a furious opposition among his Brāhmaṇa subjects by forbidding *yajñas* involving animal sacrifices is baseless. The cost of a *yajña* would have restricted the number of *yajñas* to be performed at any time. What the king *probably* did was to withdraw his patronage of sacrifices involving the slaughter of animals. It may be noted that there was no attempt at all at wholesale stoppage of the killing of animals, as is often assumed wrongly.

102

44, *ll.* 31-32. BRŪṆAHATYĀ

Brūṇahatyā or the slaying of the embryo was a heinous crime from Vedic times. (Vide Eggeling's Trn. of the *S'atapatha-Brāhmaṇa*, Vol. XXVI, *S.B.E.*, p. 19, XLIII, 272, and XLIV, 341n.)

The castration of animals is punishable with a fine of 100 *paṇas*, according to *Viṣṇusmṛti* quoted in *Vivādaratnākara*, p. 278. Kauṭilya imposes the highest fine for violence on those who "render animals impotent, or cause abortion by use of medicine to a female slave." (*Arthas'āstra*, p. 198). Kauṭilya recommends a king, who has conquered a new kingdom, to conciliate the subjects by various regulations among which he specifies the prohibition of the slaughter of females and young ones among animals (*yoni-bāla-vadham*) as well as castration (*ib.* p. 407). This rule is suggestive, along with one just previous to it in the *Arthas'āstra*, enjoining the conqueror to prohibit the slaughter of animals in certain periods and certain days, including the royal birthdays, as this is what As'oka says he in the Fifth Pillar Edict (Smith, *op. cit.*, pp. 150-152).

103

45, *ll.* 5-9. AS'OKA'S DHAMMA VIEWED AS BRAHMANICAL

Dr. J. F. Fleet (*J.R.A.S.*, 1908, pp. 491-497) argues that the *Dhamma* of the Rock and Pillar edicts is not Buddhist but merely

the traditional *Rājadharma*. Dr. J. M. Macphail rejects the idea that As'oka's *Dhamma* stands for Buddhism. (*As'oka*, p. 48) and holds that it merely denotes piety. Dr. Vincent Smith (*As'oka*, p. 60) says: "The *Dharma* or Law of Piety which he preached and propagated unceasingly with amazing faith had few, if any, distinctive features. The doctrines were essentially common to all Indian religions, although one sect or denomination might lay stress on one factor in it rather than on another." On an analysis of the various allocutions he addressed his subjects, Dr. Smith finds that none of them are distinctive in the sense of not being Brahmanical. "The *Dhamma* of As'oka is Hindu Dharma with a difference" *viz.* its stressing ethical features rather than formal. Dr. R. K. Mookerji accepts the view. It is noteworthy that when As'oka lays down a 'close time' in which no animals should be killed he selects just those days, *viz.* the full and new moon days, the fourteenth days and the eighth days after full or new moon (*aṣṭami*, *caturdas'ī*, and *parva*) on which even Hindu meat-eaters abstain from eating animal food. (*See* Rock Edict V.) The animals which he forbids being killed for eating are generally those which the *smṛtis* prohibit the eating of. Over and over again he enjoins respect for Brāhmaṇas and ascetics. His plea for largesses and pious pilgrimages is only the inculcation of the Hindu *Dharma* to make *dānas* and to go to *tīrthas*. Without going so far as to claim that these show that the king was a follower of the old Brahmanism, it might be maintained that policy as well as conviction made him unwilling to change the rules of the old *Dharma*.

104

45, *ll.* 9-12. DHARMAVIJAYA

That As'oka's frequent references to *Dharmavijaya* are to be taken in the sense it has in the famous classification of Kauṭilya of conquests as *Dharmavijaya*, *Lobhavijaya* and *Asuravijaya* has been argued ably by Mr. V. R. Ramachandra Dikshitar in his *Mauryan Polity*, (1932, pp. 128-9, and 254-257). It is appropriate to see in the edicts of Candragupta's grandson the use of

well-known expressions popularised by Candragupta's great Minister, Kauṭilya. The translation of *Dharmavijaya* as 'conquest by piety,' as contrasted with 'conquest by arms', which Dr. Hultzsch adopts (*Inscriptions of As'oka*, 1925, *C.I.I.* p. 53) is a forced interpretation, when compared with the technical sense of the word which should have been familiar to the Mauryan age. The passage in the *Arthas'āstra* where *Dharmavijaya* is defined (ed. Mysore, p. 380) runs thus :

Trayo abhiyoktāro dharma-lobha-asura-vijayina iti |
Teṣāmabhyavapatyā dharmavijayī tuṣyati |
Tamabhyapadyeta pareṣāmapi bhayāt |
Bhūmi-dravya-haraṇena lobha-vijayī tuṣyati : tam arthena abhipadhyeta |
Bhūmi-dravya-putra-dāra-prāṇa-haraṇena asuravijayī ; tam bhūmi-dravyabhyām upagṛhya agrāhyaḥ pratikurvīta |

The passage may be rendered thus :

"(A weak king threatened with invasion may have to deal with invaders of three kinds.) These are the Dharma-conqueror (*Dharma-vijayī*), the greedy conqueror (*lobha-vijayī*) and the demoniac conqueror (*Asura-vijayī*). Of these the *Dharmavijayī* will be satisfied by acceptance of suzerainty through surrender. Such a conqueror should be submitted to through fear of attack by others (as he will protect his vassal against others). The greedy invader, afraid of enemies he might make, will be easily satisfied with treasure and territory ; so he should be bought off by money. The demoniac invader (*Asura-vijayī*) will not rest content with merely taking the kingdom, treasure, sons and wives of the conquered king. Him the weak king should keep off by surrender of territory and wealth, and remain unassailed. (Against all of them, when they have begun the invasion, one should war by offers of peace and friendship, diplomacy and treacherous action.)"

In Rock Edict XIII describing the conquest of Kaḷinga, As'oka expresses his passionate grief at the evils which the war

entailed on innocent persons, combatants and non-combatants, including the terrible sufferings Brāhmaṇas, ascetics and householders, and his resolve to conquer thenceforth only through *Dharmavijaya* and the success he has had by the change of policy. "He is now able to spread his benign influence even in regions as distant as 600 *yojanas*, where dwell the Yavana king called Antiochus, the four kings called Ptolemy, Antigonus, Magas and Alexander, likewise down below, where are the Coḷas, the Pāndyas, as far as the Tāmbraparṇi, likewise in the home dominions among the Yavanas, Kambhojas, Nābhākas and Nabhapantis, the herditary Bhoja chiefs, the Āndhras and Paimdas—and find them all practising the *Dharma* which he has sought to spread, and they are filled with love to him." "That love" he continues "has been attained by me through *Dharmavijaya*" by sending his envoys to distant regions.

This is a clear declaration by As'oka of his preference of the method of extending his suzerainty or sphere of influence without recourse to arms as against the policy of force and violence which succeeded in Kaliṅga, when he conquered and annexed it early in his reign.

The *Dharmavijaya* is what is inculcated in *Rājadharma* by the *Dharmas'āstras*, where it is suggested that as far as possible recourse to arms should be avoided, and after victory in battle, if a battle becomes inevitable, no harassment of the conquered royal family or people should be permitted. The war itself should be conducted as a *Dharma* war (*Dharma-yuddha*); see *Rājadharma-kalpataru*, ed. Rangaswami, pp. 125 ff. The desire for suzerainty or extension of supremacy is justified even by resort to war by S'ankha-likhita (*op. cit.* p. 125) on the ground that a king, as a *kṣatriya* has the duty to perform the horse-sacrifice (*as'vamedha*), which can be done only by the accumulation of immense resources and by the subordination of other kings. Manu's injunction (VII, 198-199) to obtain the end by negotiation or gifts, and never by recourse to war, because the fortunes of war are uncertain, is cited by Lakṣmīdhara in his treatment of the subject in *Rājadharmakāṇḍa* of the

KALPATARU along with similar injunction. The difference between the king to whom these recommendations are made and the king in Kauṭilya is that the former is assumed to possess the strength to conquer, whereas Kauṭilya's advice is to the weak ruler who is afraid of the designs of war-like neighbours, who might, according to their disposition be one of the three classes of conquerors.

105

45, *l.* 11. DHARMA-AMĀTYA SAME AS DHARMĀDHIKARĪ

Dealing with Rāṣṭrakūṭa administration, Dr. A. S. Altekar writes as follows in his *Rāṣṭrakūṭas and their Times*, 1934, p. 169:

"The place of *Purohita* was taken in our period by an officer whose business it was to exercise general superintendence over religion and morality. *Paṇḍita*, the Minister of morality and religion in *S'ukranīti*, seems to embody the tradition of the *Dhamma-mahā-amātyas* of As'oka, and the *Samaṇa-mahāmātas* of the Āndhras (Nāsik inscriptions in *Epig. Ind.* VIII, p. 91) and the *Vinayasthitisthāpakas* of the Guptas. The tradition was continued in the north by the Ceḍis, one of whose records (Kumbhi plates of Vijayasimha. *J.A.S.B.*, xxxi, p. 116) mentions *Dharma-pradhāna* in addition to the *Mahā-purohita*. The office existed under the early Rāṣṭrakūṭa ruler Nanna-raja in A.D. 708, and the officer bore the significant title of *Dharmāṇkus'a*." (*Ind. Ant.* xviii, p. 230). *S'ukranīti* employs the *Prāḍvivāka* (who is the same as *Dharmādhikāri*) to select from *Dharmas*, ancient and modern, those which should be followed and bring them to the notice of the king. (II, *sl.* 100).

106

45, *ll.* 13-15. TITLE OF DHARMA MAHĀ-RĀJA IN THE PALLAVA DYNASTIES

From the Hirahaḍagalli grant (*Epig. Ind.*, I, 5 and VI, 88) dated in the eighth year of his reign, we learn that the early Pallava king S'ivaskandavarman (c. 200 A.D.) had the title of *Dharma-mahārāja* (R. Gopalan, *History of the Pallavas of South India*,

1928, p. 37). Simhavarman, II, the son of Viṣṇu-gopavarman, according to the Mangaḍūr grant (*Ind. Ant.*, V, p. 155) had also the title of *Dharmamahāraja.* (c. 450 A.D.) Mahendravarman (A.D. 600-630) styles himself *Mahābhūta Sa-dharmā*, which is equal to *Dharma-Mahārāja* in the introduction to *Mattavilāsaprahasana* (Travancore Sanskrit Series, lv, p. 3). The name *Dharmarāja-ratha* by which the rock-cut temple at Mahabalipuram is known, and which Dr. E. Hultzsch regarded as made in the reign of the great Narasimhavaraman I, was probably so called because he was known as *Dharma-rāja.*

Dr. K. P. Jayaswal (*History of India*, p. 184) gives a fanciful interpretation of the title. He suggests that it was "a Hindu edition or rather a Hindu counter-title of the Kuṣān *Daivaputra Ṣāhunuṣāhi.* Instead of being a *Daivaputra*, the Pallava king bases his claim on his adherence to the orthodox law and orthodox civilisation, which was quite in conformity with the law of the Hindu constitution. He was substituting *Dharma* for the divine *Daivaputra.*" I see no motive in the selection of the title other than that suggested in the text.

107

45, *ll.* 16-18. KADAMBA TITLE OF DHARMA-MAHĀRĀJA

The founder of the Kadamba dynasty, Mayūra-śarma (A.D. 345-370), came of a Brāhmaṇa family devoted to the study of the Vedas and the performance of sacrificial rites. In the Talaguṇḍa inscription (*Epigraphia Carnatica*, VII, Intn., p. 9) his name appears with the Brāhmaṇa suffix *śarman.* This is replaced by the *Kṣatriya* suffix *varman*, by which he is known in all subsequent records. As Brāhmaṇas the Kadambas could not have rightfully become kings. Mṛgeśvara-varma, the seventh ruler of the dynasty, is styled in an inscription of his queen as *Dharma-Mahārāja* Mṛigeśvara-varma.

Dr. Jayaswal suggests, without sufficient reason, that the Kadambas and the Gaṅgas assumed the title, because they were under the Pallava empire. (*History of India*, p. 199).

108

45, *ll*. 18-19. GAṄGAS AS DHARMA-MAHĀRĀJAS

For instances *see* M. V. Krishna Rao, *Gaṅgas of Talkād*, 1936, pp. 120-123. Madhava Koṅgaṇi-varma (c. 430 A. D.) was known as Koṅgaṇi-varma *Dharma-Mahādhirāja*. "In the Uttanur plates (*Madras Epigraphist's Report*, 1916, p. 35) Durvinīta is compared to Vaivasvata-Manu (A. D. 853-869). Nitimārga is lauded as the foremost of kings following *Nītisāra*. Mārasimha (A. D. 960-970) the son of Būtuga II, took the title of *Dharma-avatāra* : 'incarnation of Dharma' (Fleet, *Dynasties of the Kanarese Districts*, in the *Bombay Gazetteer*, I, i, p. 305)."

109

45, *ll*. 18-19. TITLE OF DHARMA-MAHĀRĀJA IN CAMPĀ

The Kauṇḍinya ruler of Campā Bhadravarman (c. A. D. 400) as *Dharma-Mahārāja* (R. C. Majumdar, *Campā*, 1927, III, Ins. 2, p. 3) Dr. Jayaswal considers that the Kauṇḍinya dynasty of Campā was founded by a scion of an old and respected dynasty from North India, which had settled in the Pallava kingdom, from which the migration apparently took place to Campā (*History of India*, pp. 169-170). The inscription of Bhadravarman on the Cho Dink rock is in Sanskrit prose and refers to a sacrifice performed by the king before S'iva as Bhadres'vara.

110

45, *ll*. 20-22. COḶA CLAIM TO FOLLOW MANU'S LEAD

Rājakesari Rājamahendra, who was chosen as heir-apparent to the Coḷa throne in A. D. 1059, has left three records in which the opening *pras'asti* begins thus : *Manu-nīti-murai-vaḷara*, *i.e.*, May the righteousness of Manu duly increase. The Coḷas claimed descent from Manu. A mythical ancestor of the Coḷa dynasty, named Manu Coḷa, is said to have sentenced his son to be killed by having a chariot driven over him, as he had killed a calf by running

over it, and the bereaved cow complained to the just king. (Nīla-kaṇṭha S'āstri, *Colas*, I, 1936, p. 12). An inscription states that the king followed the laws of Manu and collected only one-sixth of the produce of land (*ibid.* p. II, p. 327). Rajendra II (acc. A. D. 1246) begins his inscriptions with the words—*Manukulam-eḍuttu neri-muḍi-sūdi-aruḷiya i. e.* He who having assumed the righteous crown of the line of Manu.

111

45, *l.* 21. KĀLIDĀSA ON MANU'S IDEAL

vide *Raghuvams'a*, I, 17 :

Rekhāmātramapi kṣuṇṇād ā-Manor-vartmanaḥ param ।

i. e., He (Dilīpa) did not swerve even to the extent of a line from the path of Manu.

112

45, *ll.* 24-29. EVILS OF AṄARCHY (*Arājatā*)

For the evils of interregnums, owing to the demise of kings, and of king-lessness, *i. e., arājātā*, see *Ramāyaṇa*, II, 67, where the following *s'lokas* occur :

Nārājake janapade yajñas'īlā dvijādayaḥ ।
Satrāṇyanvāsate dāntā brāhmaṇāḥ sams'itavratāḥ ॥ (13)
Nārājake janapade mahāyajñeṣu yajvanaḥ ।
Brāhmaṇāḥ vasu-sampūrṇāḥ visṛjantyāptadakṣiṇāḥ ॥ (14)
Nārājake janapade mālya-modaka dakṣiṇāḥ ।
Devatābhyarcanārthāya kalpyante niyatair-janaiḥ ॥ (27)
Nārājake janapade svakam bhavati kasyacit. ।
Matsyā iva janā nityam bhakṣayantaḥ parasparam ॥ (31)

See 66 also *Mahābhārata*, S'āntiparva, LIX, (LVI, Kumbakonam ed. 2, 3, 16) :

Arājākeṣu rāṣṭreṣu dharmo na vyavatiṣṭate ।
Parasparam ca khādanti sarvathā dhik-arājākam ॥ (3)
Nārājakeṣu rāstreṣu havyam vahati pāvakaḥ. । (5)
Rājā cenna bhavelloke pṛthivyā daṇḍa-dhārakaḥ ॥
Jale matsyānnivābhakṣyan durbalam balavattarāḥ । (16)

See also Kāmandaka, *Nītisāra*, II, 40:

Parasparāmiṣatayā jagato bhinnavartmanaḥ ।
Daṇḍābhāve paridhvamsī mātsyo nyāyaḥ pravartate ॥

See also *Matsyapurāṇa*, ch. 225, 8-9:

Yatra s'yāmo lohitākṣo Daṇḍascarati nirbhayaḥ ।
Prajāstatra na muhyanti netā cet sādhu pas'yati ॥
Bālavṛddhātura-yati-dhvija-strī-vidhavā yataḥ ।
Mātsyannyāyena bhakṣyeran yadi daṇḍam na pātayet ॥

Dr. K. P. Jayaswal, against the sense of the contexts in which these passages occur, took the term *A-Rājatā* to mean a kingless constitution. (*Hindu Polity*, 1924, pt. i, pp. 41, 97, 98, 100, 134.)

113

46, *ll.* 1-8. ASPECTS OF BARBARIAN RULE IN INDIA

The Indian view of foreign rule is given in the Purāṇas, whose evidence is thus summarised by Dr. K. P. Jayaswal (*History of India, A.D. 150 to 350*, 1933, pp. 151-2):

"The S'ākas not only disregarded the orthodox system but they imposed a system of social tyranny. The country under them was encouraged or forced to follow their manners, ethics and religious theories: *Tannāthāste janapadās tac-chīlācāra-vādinaḥ* The Mleccha kings followed the general practice of their race,—exacted illegal taxes:

Prājāste bhakṣayiṣyanti mlecchā rājanya-rūpiṇaḥ ।

They killed and massacred even women and children. They killed cows. They killed Brāhmaṇas, and they took away the wives and wealth of others:

Strī-bāla-go-dvijaghnās ca para-dāra-dhanā-hṛtāḥ ।

They were never crowned, *i.e.*, legal kings according to Hindu law. They indulged in constant dynastic revolutions among themselves:

Hatvā caiva parasparam ; uditodita-vams'ās-tu uditāstam-itāstathā ।

"There was thus a national cry, expressed in the Purāṇa texts, practically inviting the Gupta emperors and the Hindus of the time to eradicate this lingering canker in the North-western corner—an operation which Candragupta II was obliged to perform, and which he performed successfully."

114

46, *ll.* 11-15. REMOVING THE TAINT OF KALI (KALI-RAJAḤ)

The expression *apāsta-kalibhiḥ* occurs in the verses introducing the *Kṛtya-Kalpataru* of Lakṣmīdhara the Minister of Govindacandra of Kanauj (A.D. 1110-1154), and reflects similar expressions in the Gāhadvāla grants.

115

46, *ll.* 25-29. EDUCATION OF PRINCES

The curriculum of studies, which Kauṭilya and later writers prescribe for the future king, is elaborate. The 'three Rs' are to be learnt before *upanayana*. The Veda and philosophy, especially the systems of *Sāmkhya, Yoga and Lokāyata*, are to be studied along with the *aṅgas* of the Veda, *viz.* grammar, exegetics, phonetics, metre, and ritual. *Ānvīkṣıkī* (Logic, Ethics and Metaphysics, according to the Somadeva) was to be a special study. Apart from theoretical studies, the prince is to learn the art of administration from officers of experience as well as Economics (*Vārtā*) and *Daṇḍanīti*. He is to become proficient in the use of arms, and in secular history, traditions, *Arthas'āṣtra* and *Dharmas'āstra*, after he attains his sixteenth year. This formidable list of subjects must keep a prince pretty fully engaged till he is called to the throne. (See my *Ancient Indian Polity*, 1935, pp. 38-39.)

116

47, *ll.* 24-25. INCREASING DEPENDENCE ON CUSTOMARY LAW

Caritra or usage is recognized as a source of *Dharma* from early times. Āpastamba (II, 15, 1) refers to *des'a-kula-dharmāḥ*

i.e., local and family custom. Gautama (XI, 13, 20-22) declares that local caste, and family usage, not opposed to *S'ruti*, have the force of law and so have the customs of cultivators, tradesmen, herdsmen, money-lenders and artisans; and these usages have to be ascertained before a decision is arrived at. Vasiṣṭha (I, 17) cites the authority of Manu for declaring the applicability of local, caste and family customs "in the absence of revealed texts." Baudhāyana, after reciting five disputed usages of the South, (I, 2, 1-4) declares that such usages are valid in the countries where they prevail (I, 2, 5-6). Kauṭilya directs a survey of customs in the empire, and apparently the Mauryan empire maintained such a record as the British have attempted to do in the case of the castes of the Punjab (Griffin, Tupper) and the Southern Maratha country (Steele):

> *Des'a-grāma-kula-saṃghātānām dharma-vyavahāra-caritra-samsthānam*
> . . . *Nibandha-pustakastham kārayet*. (*Arthas'āstra*, p. 62)

Manu recognises caste-usage for all the four *varṇas* (II, 18) and local, guild and family usage (VIII, 41). The king should decide cases according to both *Dharma* and local usage (VIII, 3). Yājñavalkya gives precedence to local custom (I, 343) in the administration of justice. The King must punish members of clans (*kula*), castes, (*jāti*), guilds (*s'reṇi*), corporations and provinces, who depart from their respective customs (I, 361). The administration of civil law should not violate *smṛti* rules or usage (II, 5). The usages of guilds etc., are termed *samayāḥ* (conventions), and the king should enforce them, when not opposed to true *Dharma* (II, 186). Dr. Jayaswal maintains that such *samayas* do not constitute real customary law but represent delgated legislation. (*Manu and Yājñavalkya*, p. 76).

Bṛhaspati declares emphatically the inexpediency of not maintaining the usages of localities, castes and *kulas*, as the people will get discontented (if they are not maintained) and the king's strength and wealth will suffer thereby. (I, 126, in my

edition). Vijñāneśvara, in discussing Yājñavalkya, II, 118-119 declares that the texts on succession and partition mostly repeat what actually prevails in the country. (*Lokasiddhasya anuvādakānyeva prāyeṇa asmin prakaraṇe vacanāni*). Mitramiśra (*Viramitrodaya*), says: "All *nibandhakāras* recognise that *smṛtis* on civil law simply embody recognised usage." (*Prāyeṇa vyavāharasmṛtīnām lokasiddhārthānuvādakatvam iti sakala-nibandhṛbhiḥ abhidhānāt.*). Nīlakaṇṭha says: "the science of judicial administration is based like grammar on usage". (Trn. Kane, 1933, p. 169).

Manu lays down the rule of following family usage (IV, 178):

Yenāsya pitaro yātāḥ yena yātāḥ pitāmahāḥ |
Tena yāyāt satām mārgam tena gacchan na niṣyate ||

'The path by which one's fathers have gone, and that by which grandfathers have gone, by following it, one moves on the path of the good, and by following it he does not sin!'

The verse may be described as a charter of conservatism.

The theoretical basis of the validity of custom, according to *Mīmāmsa*, is that it derives its authority from a lost or latent *smṛti* or *śruti* text. But, as one has to make two presumptions to secure recognition to usage, as against one for a *smṛti* rule, usage is held to be inferior to *explicit smṛti* rule.

Jaimini's aphorism (I, iii, 7) that *śiṣṭācāra* is valid without reference to its causes is to be limited to wordly matters (K. L. Sarkar, *Mimamsa Rules of Interpretation as applied to Hindu Law Texts*, 1909, p. 74 and pp. 238-239.)

117

47, *ll.* 25-26. EQUAL VALIDITY OF ALL TEXTS. *Ekavākyatvam*

Ekavākyatvam has been regarded as a conspicuous example of "legal fiction" which has been useful in the development of *Dharmaśāstra* and Hindu law. (Śankararāma Śāstri, *op. cit.*, p. 170).

Absolute unanimity and concord are held to exist between all *smṛti* texts on the same subject and all *s'ṛuti* passages also. The presumption is warranted by the fundamental assumptions of *Mimāmsa* that the source of all law, and of all knowledge is the Veda, and that the Veda is eternal, infallible, universal and derives its authority from itself. It does not recognise any growth in the Veda or any possibility of evolution in Veda or *smṛti*. Homogeneity is a characteristic of the Veda. Self-consistency is its mark. The idea is signified as *Ekavākyatva*. The consequences of the presumptions are that consistency and harmony must be deemed to exist between one Veda and another, between one passage of *s'ṛuti* and all others, between one *smṛti* and another, and between *s'ṛuti* and *smṛti*, as well as between *smṛti* and *ācāra* (custom, usage). The *S'ākhāntarādhikaraṇa* section of *Pūrvamīmāmasa* maintains that all *s'ākhās* speak with one voice. Inconsistency between *smṛti* precepts, as in the rules of marriage of Brāhmaṇas with women of the other three castes (Manu permitting all three, Yājñavalkya permitting only marriage with *kṣatriya* and *vais'ya* women and later *smārtas* prohibiting marriage outside his own caste to the Brāhmaṇa) or the practice of *niyoga*, is explained away by the doctrine of limited applicability to particular epochs, or ages. The remarriage of women in the five cases sanctioned by Parās'ara (IV, 30), is rejected on the ground of *Kalivarjya*, and as simply repeating an old and defunct rule. (Mādhavācārya's commentary on I, 34). Similarly, by the application of the principle of harmony involved in this *nyāya*, *smṛti* rules have to be harmonised with valid usage (*samayācāra*) and should be rejected if contravening them (*virodhe*). Many illustrations of the way in which this *nyāya* has been applied by commentators and *smartās* are quoted and explained by Mr. C. S'ankararāma S'āstri (*Fictions in Hindu Law*, pp. 142 ff.) On the application of this principle to reconcile conflicts, the doctrine that *ācāra* or usage, which is valid, is only that of *siṣṭhas* (the elect), gives rise to apparent difficulties as many wrong acts condemned by conscience or *smṛti* are remembered of heroic characters of the past. Are such things valid if done now? The

answer is '*No*', because the test of valid conduct is whether it has been pursued by its author with the consciousness of doing a thing which is meritorious. Accordingly, the moral lapses of old sages, heroes and gods, are no precedents. (*Fictions in Hindu Law*, p. 138).

118

47, *ll.* 26-27. ANONYMOUS TEXTS

The question of their admissibility is thus stated by Mitramis'ra (*Vīramitrodaya*, Paribhāṣā-prakās'a, pp. 17-18):

"In several works of authority, certain quotations occur, which are introduced merely thus; 'to-this effect is the *smṛti*' 'to this effect is the *s'loka*'. (The authorship is indeterminate). Such quotations are authoritative in as much as they have been unequivocally accepted by great men. What is styled *Ṣaṭ-trims'anmatam* is not so authoritative, according to the *Kalpataru*, because it is accepted only by some, being rejected by others. Bur Vijñānes'vara, Aparārka, S'ūlapāṇi and others regard its citation as authoritative. This is only proper."

Yadapi smartṛnāma anirdis'ya 'atra smṛtiḥ' 'atra s'lokaḥ' ityādi prāmāṇika-likhanam, tadapi avigīta-mahājana-parigṛhītatvāt pramāṇam. 'Smṛtyantareṣu' ca ityanenaiva saṃgṛhītam veditavyam. 'Sat-trimṣanmatādikam' tu kais'cideva parigṛhītatvāt apramāṇam ityuktam Kalpataruṇā. Vijñānes'vara-Aparārka-S'ūlapāṇi-prabhṛtibhistu pramāṇattvena parigṛhītam. Yuktam ca etat."

119

47, *l.* 27. JUSTICE AND GOOD CONSCIENCE

The rule of equity and good conscience is implicit in the dicta of Manu and Yājñavalkya on the "feeling of satisfaction, which the good get" (*Sādhūnām ātmanastuṣṭiḥ*, Manu, II, 6) and what one finds to one's liking (*svasya ca priyamātmanaḥ*), (Manu, II, 12, and Yājñavalkya, I, 7). To guard against caprice being

taken as equivalent to conscience, the commentators explain that the satisfaction should be that which only those who are both learned in the Vedas and righteous feel, thereby relieving each man of the privilege of deciding what he should do according to his likes and dislikes. Medhātithi points out (ed. Jha, I, pp. 68-69) that the trustworthy character of such learned and good men is the guarantee of its not being misused. " When the learned and good feel satisfied as to the righteousness of an action, it must be taken as right, because such men will never feel satisfied with anything that is wrong."

But equity and good conscience can not over-ride clear law or revealed text. This is made clear by Viśvarūpa (*Yājña.*, I, 7, vol. I, pp. 13-27) who points out that the satisfaction which one feels should not be in action which runs counter to Vedic injunction, or *smṛti* or is due merely to fidgets. Kullūka (*Manu*, II, 6) lays down that " self-satisfaction " is authoritative only in regard to matters in which an option is open, following the *Mitākṣarā* which rules that the rule of satisfaction applies only to cases in which there are several lawful alternatives open, one of which has to be chosen. This is also the view of the *Smṛticandrikā* (Saṃskārakāṇḍa, 5).

120

47, *l.* 29. INSIGHT OR INTUITION (*Yukti*)

The application of reason, or the power of inference to the resolution of difficulties in evidence is suggested in the law books *e.g.* Yājñavalkya, II, 212. *Viṣṇusmṛti* recommends the application of reason (*yukti*) to the determination of the genuineness of documents. Vyāsa, Prajāpati and other writers advocate the use of *yukti* for the proper construction of documents. But the most powerful advocate of the application of *yukti* is Bṛhaspati. Over and over again he says (XXVI, 4, 49, 50 in *Vyavahārakāṇḍa*) that the determination should be in accordance with intelligent apprehension (*yukti*) as otherwise there will be disaster :

Yuktyā vibhajanīyam tat, anyathā anarthakam bhavet |

He illustrates the disastrous effect of the failure to apply *yukti* to determine whether one is a thief or not, a good man or not, by the condemnation of the sage Māṇḍavya for theft:

Cauro-acauro sādhvasādhuḥ jāyate vyavahārataḥ |
Yuktim vinā vicāreṇa Māṇḍavyas'-coratām gataḥ ||
(*Vyav.*, I, 116)

He would apply it to determine the preference in cases of conflict of laws:

Dharmas'āstra-virodhe tu yukti yukto vidhiḥ smṛtaḥ |
(*ib.* IX, 8)

He denounces vigorously in a famous verse dependence on the letter of the written law (*s'āstra i.e., smṛti*) without an intelligent conception of the spirit through *yukti*:

Kevalam s'āstram-ās'ritya na vaktavyo vinirṇayaḥ |
Yukti-hīne vicāre tu Dharma-hāniḥ prajāyate ||
(*ibid.*, I, 114)

"A decision should not be arrived at by solely depending on the *s'āstra*, for, in an enquiry devoid of the application of reason (*yukti*), there is destruction of Dharma."

It is natural that with such powerful sanction as Bṛhaspati's, King Somes'vara should enjoin the magistrate to award sentences, not by mechanically following *smṛti* precept, but by the exercise of his own reason (*yukti*):

Pramāṇe nis'citaivāpi divyair vāpi vicārite |
Yuktyā daṇḍam nṛpaḥ kuryāt yathā doṣānusārataḥ ||

Mānasollāsa, ed. Gaekwad's Oriental Series, v. 1286. This is a conspicuous illustration of the extended scope of the application of *yukti* by a king of the twelfth century.

121

48, *l.* 2. Acceptance of the Usages of Pratiloma Castes

Toḍarānanda and *Vīramitrodaya*, Vyavahāraprakās'a, (ed. Jivānanda, p. 120) cite the following verse from Kātyāyana:

.Pratiloma-prasūteṣu tathā durga-nivāsiṣu ।
.Viruddham niyatam prāhuḥ tam dharmam na vicālayet ॥

i.e. "(The King) should not disregard the fixed rules of conduct among those who belong to the *pratiloma* castes and among the inhabitants of the forts (or inaccessible mountain places) even if they are opposed (to rules of *smṛti.*)" (Trn. Kane, *Kātyāyana*, 1933, p. 125.)

The rule in a slightly different form is cited by Lakṣmīdhara in *Vyavahārakalpataru* as from Bṛhaspati:

Pratilomaprasūtānam tathā durga-nivāsinām ।
S'āstravad yatnato rakṣyā sandigdhau sādhanam tu sā ॥

One of *pratiloma* birth was deemed so degraded that to call a person a *pratilomaja* was an offence (*Yājñavalkya*, II, 207.)

122

48, *ll.* 5-6. THE USAGES OF THE GOOD S'ŪDRA

Manu gives the sources of *Dharma* in the following *s'loka*:

Vedo akhilo dharma-mūlam Smṛti-s'ile ca tad-vidām ।
Ācāras'caiva sādhūnām ātmanastuṣṭireva ca ॥

Buehler translates the verse thus:

"The whole Veda is the (first) source of the sacred law, next the tradition, and the virtuous conduct of those who know the Veda (further), also the customs of holy men, and (finally) self-satisfaction." (*S.B.E.*, XXV, p. 30.)

Medhātithi construed "the practice of good men" (*sādhūnām ācāraḥ*) with "learned in the Veda" (*tad-vidām*), and correlated goodness and Vedic learning, confining valid usage, as a source of *Dharma*, to those who combined both, *i.e.* Brāhmaṇas. The commentators following him distinguished between *s'īla* (conduct) of those learned in the tradition (*smṛti*) and usage (*ācāra*) of good men (*sādhūnām*) and held, like Sarvajña-nārāyaṇa, that the latter was inferior to the former on account of the possibility of incorrectness of the tradition on which usage was based. That the distinction was not perhaps originally intended is evident from the

circumstance that Gautama, (I, 2) refers to *s'īla* (conduct) only, while Baudhāyana (I, 4) and Vasiṣṭha (I, 5) refer only to usage or practice (*āgama* and *ācāra*). The original belief was that among those learned in the Veda and tradition (*smṛti*) there could be no difference between conviction and practice. But valid usage was held to be those of Brāhmaṇas only. Mitramis'ra (c. A.D. 1610) was the first to make a break by suggesting an alternative interpretation. In *Vīramitrodaya*, Paribhāṣā-prakās'ā, p. 9. (ed Chowkhāmba, 1896), he suggested that, as an alternative explanation of the verse of Manu cited above, the word "*ācāraḥ*" should be connected with "*Sādhūnām*," when the meaning would be that "even those not learned in the Veda are to be accepted as authorities, if they are men free from weakness and defects, and in such cases, the usage of good S'ūdras (*Sacchūdrāḥ*) becomes authoritative. Though Mitramis'ra restricted the applicability of such usage to S'ūdras alone, even then, the break he made was definitely important, and a concession to the altered times. The passage is important enough for full citation :

> "*Athavā, 'ācāras'caiva sādhūnām' iti cchedah. Evam ca a-vedavidām api kṣīṇa-doṣa-puruṣāṇām ācāraḥ pramāṇam. Tathā ca sac-chūdrādyācāraḥ tat-putrādīn-prati bhavati pramāṇam.*"

123

48, *l.* 10. SUPERSESSION OF S'IṢTĀCĀRA BY SĀDHŪNAM-ĀCĀRA

In the earlier authorities emphasis is on *S'iṣta*, explained in the *Maskari-bhāṣya* as "*avagata-vedārthāḥ*" (men proficient in the understanding of the meaning of the Veda) and "*sva-dharmāvasthitāḥ*" (men rooted in the discharge of their own *Dharma* (*Gautamasmṛti*, ed. Mysore, 1917, p. 453 and p. 456). Gautama (XXVIII, 49 and 51) rules that "in cases for which no rule is given, the course should be followed of which atleast ten (Brāhmaṇas), who are well-instructed (in the Veda) *i.e. s'iṣṭāḥ* skilled in reasoning and uncovetous, approve. . . . But on failure of them, the decision of one *s'rotriya*, who knows the Veda, and is properly instructed

(in the duties, shall be followed) in doubtful cases." (Buehler, in *S.B.E.*, II, 1897, p. 310).

Baudhāyana (I, 4-6,) after laying down that the source of *Dharma*, after the Veda and *Smṛti*, was *S'iṣṭācāra*, proceeds to describe the qualities of the *s'iṣṭa* as "freedom from envy, and pride, the possession of grain for not more than ten days' consumption, and freedom from covetousness, hypocrisy, greed, perplexity, arrogance and anger:"

(*S'iṣṭāḥkhalu vigatamatsarāḥ nirahaṃkārāḥ kuṃbhī-dhānyāḥ alolupāḥ dambha-darpa-lobha-moha-krodha-vivarjitāḥ* I

Vasiṣṭha (I, 6) defined the *s'iṣṭa* as "one whose heart is free from desire" (*s'iṣtah punaḥ akāmātmā.*) Vedic learning, ascetic unwordliness and saintliness are old qualifications of the *s'iṣṭa*, whose practice or precept was to be followed where there was no clear rule. While re-affirming the position of the *s'isṭa* as the declarer of *Dharma* in doubtful cases, Manu defines the qualifications of the *s'iṣṭa* (XII, 108-9): "If it be asked how it should be with respect to (points) of *Dharma* which have not been clearly stated, the answer is that what Brāhmaṇas, who are also *s'iṣṭas*, propound should clearly have force. Those Brāhmaṇas are deemed *s'iṣṭas*, who, in accordance with *Dharma* have studied the Vedas with their appendages, and who perceive by the senses the revealed texts as reason for distinguishing right and wrong." The appendages of the Vedas are stated by Medhātithi (ed. Jha, II, 1839, p. 487) to be the *Itihāsa* and *Purāṇa*. To these are added the Vedāṅgas by the *Smṛticandrikā* (ed. Mysore, *Saṃskāra*, 1914, p. 6) and the *Mimāmsa*, *Smṛti* etc. by Kullūka.

Manu's injunction (II, 6 and 12) that the *ācāra* (custom) of the good (*sādhūnām*) or *sadācārah* should be regarded (*Tantravārtika*, p. 143) as one of the sources of *Dharma* must be read with the above injunction to refer doubts to *s'isṭāḥ*, and the "good men" he had in view treated as those fully qualified to be designated *s'iṣṭāḥ*. The equation *S'iṣṭaḥ*, *Sādhuḥ* is accepted by the commentators and digest makers, like Vijñānes'vara, Kullūka and others (*Mitākṣarā*,

I, 7, and Manu, II, 6) but the tendency is to both limit and broaden the old concept of the authority competent to decide doubtful cases. Thus, Vis'varūpa (c. A.D. 900) (commenting on Yājnavalkya, I, 7) would limit *sadācāra* to religious and spiritual, as distinguished from temporal or wordly acts of the good men. On the other side, Mādhavācarya (c. 1350) gives the power of interpretation as *sādhavaḥ* "to the elders of each family and tribe." (ed. *Bib. Ind.*, p. 100), and Mitramis'ra gives a purely ethical interpretation of *sādhavaḥ* by quoting the following fanciful etymology from *Visṇupurāṇa* :

"Good men free from all defects are called *sat*, and their practice, *ācaraṇa*, is called *sadācāra*." Mitramis'ra further brings the practice of the good S'ūdra within *sadācāra*, so far the *Dharma* for the last *varṇa* is concerned.

The supersession is manifestly due to the impossibility of finding men with the qualifications laid down for *s'iṣṭāḥ*, and is an illustration of silent adaptation.

124

48, *ll.* 10-14. ANIMUS AGAINST THE LEARNED S'ŪDRA

As'vaghoṣa in his *Vajracchedika* claims that the S'ūdra Buddhists were as learned as Brāhmaṇas. The S'ūdra was excluded from Vedic but not from secular studies. Among Buddhists there was no exclusion of S'ūdras from *any* kind of learning, and they were eligible even for the monastic life. The Buddhist monk was identified with the learned S'ūdra and much of the animus against the former was transferred to the latter. Yājñavalkya (II, 235) lays down that he who feeds the S'ūdra ascetic at religious and *s'rāddha* ceremonies is liable to punishment. This is obviously aimed against hospitality to the Buddhist monk. Such bitter statements as that the S'ūdra who has learned even the alphabet should be kept at a distance reflect only the animus against the Buddhist. The Buddhist ascetic is described by Kauṭilya (*Arthas'āstra*, Mysore ed. 1909, p. 199) as *vṛṣaḷa-pravrajita*—*i.e.* S'ūdra ascetic.

" Manu's hostility towards the S'ūdra is primarily towards the learned S'ūdra, the controversialist, claiming equality and freedom." (Jayaswal, *Manu and Yājñavalkya*, p. 92.)

Manu's references to "S'ūdras who assume the marks of the twice-born" (*S'ūdrāms'ca dvija-lingināḥ*; IX, 224) and heretics (*Pāṣaṇḍinaḥ*, IX, 225) as well as those who follow prohibited pursuits (*Vikarmasthāḥ*, IX, 225) are to Buddhists. In XII, 95 Manu alludes to them as those outside the Vedas (*Vedabāhyāḥ*). The *Viṣṇupurāṇa* condemns the village mendicant and Jaina ascetic (*Grāma-yājaka nirgrantho bahudoṣo durāsadaḥ*). The *Ṣat-trimsanmata*, ed. Chowkhamba, p. 174, rules that a bath with clothes on is the prescribed purification when one touches Bauddhas, Pās'upatas, Jainas, Lokāyatas, Kāpilas, and the twice-born who follow forbidden pursuits.

125

48, *ll.* 17-28. LIMITS OF ĀRYĀVARTA

Baudhāyana (I, 2, 10) lays down the limits of Aryan occupation and indicates the areas which one can visit only subject to penance :

Prāg-Adars'anāt, pratyak-Kālakavanāt, dakṣiṇena-Himavantam, udak-Pāriyātram, etat Āryāvartam. Tasmin ya ācāraḥ sa pramāṇam. Gaṅgā-Yamunayor-antaram ityeke.

Athātra Bhāllavino gāthām udāharanti :

Pas'cāt-sindhur-visaraṇī Sūryasyodayanam puraḥ ।
Yāvat Kṛṣṇo vidhāvati tāvaddhi brahmavarcasam ॥ *Iti :*
Avantayo-Aṅga-Magadhāḥ Surāṣṭrā Dakṣiṇāpathāḥ ।
Upāvṛt Sindhu-Sauvīrā ete saṃkīrṇa-yonayaḥ-॥
Ārattān Kāraskarān Puṇḍrān Sauvīrān Vaṅgān Kaliṅgān
Prāñūnān iti ca gatvā punas-stomena-yajeta-sarvapṛṣṭhayā vā.

Athāpyudāharanti :

Padbhyām sa kurute pāpaṃ yaḥ Kaliṅgān prapadyate ।
Ṛṣayo niṣkṛtim tasya prāhur-Vais'vānarām haviḥ. ॥

(I, 2, 16.)

It will be seen that the areas which Baudhāyana excludes from *Āryāvarta* are the Punjab, Magadha, Aṅga, Vaṅga, Gujarāt, Sindh, the lands south of the Vindhyas, as well as Rajputāna and Mālwa north of the range.

S'ankha-Likhita lay down:

Prāk-Sindhu-Sauvīrāt, dakṣiṇena Himavataḥ, pascāt Kāmpilyāt, udak Pāriyātrāt, anavadyam brahmavaracasam.

They thus exclude the lands of Sindh and Sauvīra (Kathiawar and Gujarat).

Paiṭhīnasi lays down:

Ā-Himavataḥ, Ā-ca Kumāryāḥ Sindhur-Vaitaraṇī-nadī-Sūryasyodayanam puraḥ yāvad-vā kṛṣṇa-mṛgo vicarati tatra Dharmaḥ catuṣpādo bhavati |

The lands described as the eastern limit include Orissa. Baudhāyana (as quoted in *Vīramitrodaya*, Paribhāṣā-prakās'a, p. 58) adds that he who visits Aṅga, Vaṅga, Kaliṅga, Magadha and Sauvīra except on a pilgrimage must undergo new *saṃskāras (punas-saṃskāram arhati).*

Manusmṛti, II, 22-23, lays down that the Aryan country runs from sea to sea, east and west, and mountain to mountain, *i.e.* the Himālayas and the Vindhyas, north to south. He adds that where the black antelope naturally flourishes the country must be deemed fit for sacrifices, and the lands (where it does not) as those of barbarians.

Ā-samudrāttu vai pūrvāt, ā-samudrāttu pas'cimāt |
Tayorevāntarṃ giryoḥ Āryāvartam vidur-budāḥ ||
Kṛṣṇasāras-tu carati mṛgo yatra svabhāvataḥ |
Sa jñeyo Yajñiyo des'o mleccha-des'astu ataḥ-paraḥ ||

The definition of the limits given by the Bhāllavins, a school of the Sāmaveda, is quoted with approval by Vasiṣṭha (I, 15):

Athāpi Bhāllavino Nidāne gāthām udāharanti—
Pascāt-Sindhur-vidkāraṇī, Sūryasyodayanam puraḥ |
Yāvat-kṛṣṇobhidhāvati tāvad-vai brahmavarcasam ||

That is to say, the western boundary of *Āryā-varta* is the Indus, the eastern the Sūryodayana, and as to the north and south, the habitat of the black antelope.

That the lands which are free for the antelope to roam over, for barley and the *kus'a* grass to grow, and which are full of holy places are those which the wise will live in is stated in the *Ādi-purāṇa*, as quoted by the *Vīramitrodaya* (*op. cit.* p. 57):

Kṛṣṇasārair yavair darbhaiḥ cāturvarṇyās'ramaistathā ।
Saṃṛddho dharma-des'as-taṃ ās'ryeran vipas'citaḥ ॥

It will be noted that the emphasis is also on the prevalence of the *varṇās'rama-dharma* in the area. This principle is stated explicitly by *Viṣṇusmṛti*:

Cātur-varṇya-vyavasthānam yatra des'e na vidyate ।
Tam mleccha-des'am jānīyāt Āryāvartam-athaḥ-param ॥

For other quotations see the Paribhāṣā-prakās'a of *Vīramitrodaya*, pp. 58-60. Dr. K. P. Jayaswal (*Manu and Yājñavalkya*, pp. 27-29) discusses the subject, and concludes that the extension or restriction of the area of Aryan usage coincided with the advance or retreat of Brahmanical rule in the land.

126

48, *l.* 32. ĀPAD-DHARMA

In times of distress occupations not normally allowed to a *varṇa* are permitted to its members. These are summarised in *Manusmṛti*, IV, 81-104, with specifications of the occupations which even in distress a Brāhmaṇa should not follow. Distress is held to know no law, and a Brāhmaṇa who accepts food even from the most degraded is no more tainted 'than the sky by mud' (*ib.* 104). Yājñavalkya deals with the same topic in the section on expiations (III, 35-44). He too holds that afflicted by distress and eating anywhere the Brāhmaṇa incurs no sin needing subsequent expiation.

Parās'ara is even more emphatic. "During revolutions, (*des'a-bhaṅga*), foreign travel or exile (*pravāsa*), affliction (*vyasana*), let

one save himself first, and then think of performing *Dharma*. . . When times of distress have to be tided over, one should not think of purity or proper conduct (*s'aucāçāra*). He should subsequently perform expiation (when the pressure is past) and act according to *Dharma*" (VII, 41 and 43). Again, he holds that "the Brāhmaṇa who eats in the house of a S'ūdra in a time of distress is purified by his mere feeling of regret or by muttering the *drupada*" (XI, 21). This exemption applies only to periods of distress as the food of the S'ūdra is held to be capable of making a Brāhmaṇa lose his caste (XII, 32).

For other texts on *Āpad-dharma* see *Āpastamba*, 20, 10-21; *Gautama* VIII, 1-26; *Vasiṣṭha*, II, 22-29; *Baudhāyana*, II, 4, 16-21, and *Viṣṇu*, II, 15 and LIV, 18-21, and the commentaries on the relevant passages of Manu and Yājñavalkya. The principle was capable of considerable extension, the only restriction being the avoidance of those occupations which were specifically named as inadmissible even in times of distress, *i.e.*, when one could not live by following his *varṇa* occupation.

127

49, *ll.* 1-2. VOYAGES AND VISITS TO PROHIBITED AREAS

Baudhāyana (II, I, 1-2) places sea-voyage (*samudra-samyānam*) at the head of a number of offences which cause loss of caste (*patanīyāni*) which are only less heinous than the inexpiable sins (*mahapātakāḥ*). But he also mentions sea-faring as one of the special customs which are allowed to the people of the north (I, i, 2, 4. *Athottarataḥ . . . samudrayānam iti*), but he rules that if the special practices of the north or the south are put in force anywhere else, it would lead to sin (I, i, 2, 5). Manu (III, 158) forbids sea-voyages by implication by laying down that those (*dvijas*) who do so should be avoided, (*varjaniyāḥ prayatnataḥ*, III, 166). Apparently the sea-trade for which he provides no fixed rates for conveyance, were to be undertaken by others.

In the *Bṛhannāradīya-purāṇa* (cited in *Dharma-pradīpā*, 1937, p. 50) it is implied that the re-admission into their *varṇa* of

those who had gone on sea-voyages was allowed before the Kali-yuga, because they are stated as disallowed (*varjyāḥ*) in the Kaliyuga :

Samudra-yātrā-svīkāraḥ kamaṇḍalu-vidhāraṇam ।
Dvijānām asavarṇāsu kānyāsūpagatam tathā ॥
Devarācca sutotpattiḥ madhuparke paśorvadhaḥ ।
Māmsādanam yathā śrāddhe vānaprastāśramastathā ॥
Dattakṣatāyāḥ kanyāyāḥ punardānam parasya ca ।
Dīrgha-kālam brahmacaryam naramedhāśvamedhakau ॥
Mahāprasthanagamanam gomedhaśca tathā makhaḥ ।
Imān dharmān Kaliyuge varjyānāhūḥ manīṣiṇaḥ. ॥

128

49, *ll.* 6-8. RELAXATIONS OF YUGA-DHARMA

Parāśara (I, 33) lays down :

Yuge-yuge tu ye dharmāh tatra tatra ca ye dvijāḥ ।
Teṣām nindā na kartavyā yugarūpāhi te dvijāḥ. ॥

This indicates that rules are to be different for the different cycles of time (*yuga*). The principle is that duties will be proportioned to the capacity of men in different cycles, it being held that there is a deterioration of capacity and power from the first to the fourth *yuga*, and in the fourth *yuga* itself with the lapse of time. Many rites like the sacrifice of cows and the doing of many acts by ancient sages, which now perplex us, are due to the superior potency of the people of those ages. The point is brought out by the Śloka Āpatamba :

Teṣām tejo-viśeṣena pratyavāyo na vidyate ।
Tad-anvīkṣya prayuñjānaḥ sīdatyavarako naraḥ ॥

The point is brought out by Bṛhat-Parāśara ;

Yuge yuge tu ye dharmāḥ teṣu dharmeṣu ye dvijāḥ ।
Te dvijā nāvamantavyā yugarūpā hi te dvijāḥ ॥

A long catalogue of various practices, which are now condemned for the Kali-yuga, is given in the extracts collected on pp. 50-56 of the

recently published *Dharmapradīpa* (Calcutta, 1937) from the *Parās'ara-Mādhaviya*, ed. Islampurkar, I, i, pp. 128-142.

The reduction of the ancient rigor of duty to women and the men of the different castes is illustrated by Parās'ara's chapters on purification. A married women is prohibited from performing *vratas* (vows necessitating austerity) as by doing so she would diminish the longevity of her husband (IV, 17). A married women, who has lost her husband by flight, death, or by his *sanyāsa*, or impotency or becoming an out-caste, is eligible for re-marriage (IV, 30). The S'ūdra need not observe fasts (to secure purification for a sin), as by making a mere gift he can secure the result. (VI, 51, repeated in XI, 28.)

129

49, *ll.* 10-12. RELAXATION OF DUTIES FOR S'ŪDRAS AND WOMEN

S'rī Bhāgavata rules:

Strī-s'ūdra-dvijabandhūnām trayo na s'ruti-gocarā ।
Iti Bhāratamākhyānam muninā kṛpayāhṛtam ॥

i.e. 'For women, S'ūdras and degraded Brāhmaṇas access to the Veda is shut and the compassionate sage has provided for them the *Mahābhārata* instead.' Commenting on this dictum, Mitramis'ra states (*Paribhāṣā*, p. 37) that the knowledge of *Ātman* which the Veda will give can be equally furnished by the epics (Purāṇas). S'ūdras and women are entitled to knowledge of the *Ātman* but not through the Vedas. He quotes another Purāṇa to the effect that the devout S'ūdra acquires true knowledge through the reading of the Purāṇas and that according to some sages there is parity between women and S'ūdras:

Asti s'ūdrasya s'us'rūṣoḥ purāṇenaiva vedanam ।
Vadanti kecin munayaḥ strīṇām s'ūdrā-samānatām ॥

Like others who die at Kās'i they can obtain *mukti* by death there.

130

49, *ll.* 12-15. UPANAYANA FOR WOMEN

Dr. A. S. Altekar in his *Position of Women in Hindu Civilisation*, 1938, shows that originally girls had *upanayana* performed for them like boys, and performed the daily *Sandhya* rites, as Sīta is said to have done in the *Sundarakāṇḍa* of the *Rāmāyaṇa* (XIV, 48), Mitramis'ra in his *Samskāra-prakās'a* (pp. 402-405) deals with the question of *upanayana* for women. Hārīta is cited to show that women are of two classes, *Brahmavādinī* and *Sadhyovadhūḥ*; the former has the sacrificial fire, study of the Veda and alms within her own house; the latter has *upanayana* done when marriage is nigh, and then the wedding is celebrated. *Yama* is quoted to show that in past ages (*purā-kalpe*) girls used to have the girdle of *upananayana* (*mauñjī-bandhanam*), study of Veda, and the recitation of the Sāvitrī, when their fathers, uncles or elder brothers used to teach them, and arrange for their daily begging within the house itself, but the girls were to abjure the wearing of the antelope skin like the boys, and matted locks. The reduction of the duties of women, or as *status*, as modern observers may view it, is seen in Manu:

"The *samskāras*, which are done for boys with Vedic mantras should be performed for girls without Vedic recitation; the completion of the *samskāras* for girls is for the protection of their bodies. It should be done in proper time and form!" Manu rules that for girls marriage should be regarded as the substitute for *upanayana*, as a Vedic ceremony, the service of the husband as equal to living in the house of the *Guru*, and attention to domestic duties as tantamount to attention to the sacred fire. Her association in all *karma* gives the wife an equal part in them with the husband, even though her function is passive.

As late as about 150 B.C. the freedom given to women to perform Vedic rites is illustrated by the Nānāghāt inscription of Queen Nāyanikā, widow of S'atakarni I, who states that she lived the life of *brahmacarya* (after the death of her

husband, as the faithful Hindu widow is enjoined to live) and that she performed the *Rājasūya* and *As'vamedha* sacrifices. But, whether her claim relates to her association in these sacrifices as *Paṭṭa-Mahiṣī* (senior queen) with her husband, when *he* performed them, or by herself, as Dr. Altekar holds (*op. cit.* p. 243) it is hard to say, but the probability is in favor of the former view, as her description of her own life fits in with the Brahmanic ideals of the virtuous widow.

131

49, *ll.* 16-19. REDUCTION OF STRINGENCY OF RULES OF TAINT

The rules of purification (*s'uddhi*) were made less stringent in the later *smṛtis* like Parās'ara's, and the rules about the acquisition of taint (*doṣa*) necessitating purification were made easier, by application of the principle that with waning power and the passage of cycles of time, men required more lenient construction of offences and expiation. This is illustrated by the rules regarding untouchability (*aspṛs'ya*) following either one's *varṇa* or some special act. Thus, according to a *s'loka* cited in *Dharmapradīpa* (p. 150), contamination which arises even from conversation with a low-born person or an out-caste (*patita*) in Kṛta-yuga, from touch in Tretā-yuga, and from eating his food in the Dvāpara-yuga, arises in the Kali-yuga only by actually doing the forbidden act. Parās'ara ruled that the sin of as (association with these guilty of the five inexpiable sins (*mahā-pātaka*) can be removed by a *vrata*. Another dictum states that the sin of touching a Caṇḍāla is removed by looking after the taint at the Sun, (*ib.* p. 152); (*Caṇḍālaspars'ane sadya ādityam avalokayet.*) Similarly, in the Kṛta-yuga, one had to leave the country in which there were out-castes and sinners; in Tretā-yuga, it was deemed enough if one left the village in which they were found, and in Dvāpara-yuga the particular family concerned; but in the Kali-yuga, it is enough to leave the actual perpetrator of an offence. At the same time, certain general exemptions from impurity by touch were given. Thus, artisans,

cultivators, physicians, servants, (*dāsī-dāsa*), kings, and learned Brāhmaṇas are always pure (p. 158.) In festivals, pilgrimages, marriages and sacrifices, there should be no consideration of purity or impurity following touch (p. 151.) The literature of *s'uddhi*, which is treated elaborately in the later *smṛtis* and *nibandhas* (digests), illustrates the principles suggested in the text.

Yājñavalkya (III, 28-29) lays down automatic purification (*sadyas'-s'aucam*) in the following cases:

> *Ṛtvijām dīkṣitānām ca yajñīyam karma kurvatām* ǀ
> *Satrī-vratī-brahmacārī-dātṛ-brahmavidām tathā* ǁ
> *Dāne vivāhe yajñe ca saṃgrāme des'aviplave* ǀ
> *Āpadyapihikaṣṭāyām sadyas'-s'aucam vidhīyate* ǁ

Other dicta against the occurrence of impurity in certain cases are indicated in the following rules of Paiṭhīnasi and Aṅgiras:

1. *Atha deva-pratiṣṭāyām gaṇa-yātrādi-karmaṇi* ǀ
   S'rāddhādau pitṛ-yajñe ca kanyā-dāne ca no bhavet ǁ

2. *Rājya-nās'astu yena syāt vinā rājñā sva-maṇḍale* ǀ
   Prayāsyatasca saṃgrāme home prāsthānike sati ǁ
   Mantrādi-tarpaṇair-vāpi prajānām s'ānti-karmaṇi ǀ
   Go-maṅgalādau vais'yānam kṛṣi-kālātyayesvapi ǁ
   Ās'aucam na bhavel-loke sarvatr-ānyatra vidyate ǀ

132

49, *ll.* 19-20. RELAXATION OF RULE FOR AGE, INFIRMITY ETC.

The rule of Cyavana (cited in *Dharmapradīpa*, p. 158) illustrates the equitable rule lowering the amount of expiation in the case children, old persons and women:

> *Bāla-vṛddha-strīṇām ardham prāyascittam ; Ā ṣodas'āt bālaḥ ; saptatyūrdhvaṃ vṛddaḥ ;*

Similar exemptions exist in many other sections of *Dharmas'āstra* for these three classes as well as persons who are ill.

133

50, *ll.* 1-2. STRUGGLES OF BHAKTI-MĀRGA ADHERENTS WITH "SMĀRTAS

The struggles of the saints of the *Bhakti-mārga* with the strict adherants of *Dharmas'āstra* are recounted in Hindu and S'aiva hagiology. To begin with, the saints were not of the first *varṇa* and accordingly had no right to teach religion, according to strict rule. Again, within the fold of devotees (*bhaktāḥ*) the traditional rule of superior and inferior, and the inferiority of women for spiritual exercises, was discarded. The saints often attacked caste distinctions, *e.g.* Kabịr (R. G. Bhandarkar, *Vaiṣṇavism S'aivism*, 1913, pp. 70, 83), Caitanya's repudiation of caste in admission of disciples, and by the Ucchiṣṭa-Gaṇapati sect (p. 148). Some of them scoffed at the rites prescribed by *Dharmas'āstra.* Thus Nāmdev derided fasts and pilgrimages (*ib.* p. 90) and Tukārām followed suit by condemning mere physical purification and mechanical rites (*ib.* p. 92) Illustrations can be easily multiplied.

134

50, *ll.* 8-12. EMANCIPATION OF INDIVIDUAL EARNINGS FROM FAMILY CONTROL AND JOINT-OWNERSHIP

For the Roman Law of the growth of individual right in one's own earnings through the application of the principle of *peculium castrense*, under which Augustus had conceded to a *filius-familius* on service the right to dispose by testament of what he had acquired in the exercise of his profession, so as to give a soldier ultimately the right to dispose of all his property, including gifts, legacies etc. see J. Muirhead, *Historical Introduction to Roman Law*, 1899, pp. 322-323, as well Sir H. Maine's *Ancient Law*, ed. Pollock, p. 149.

The Hindu Gains of Learning Act (Act XXX of 1930) provides that notwithstanding any custom, or rule of interpretation of Hindu Law, no gains of learning shall be held not to be the exclusive property of the acquirer. It has set at rest the old controversies

about. the application of the rules of Manu (IX, 206) and Yājña-valkya, (II, 118-119) and the comments thereon, supported by citations from Nārada, (p. 190 ed. Jolly) verse 10, Vasiṣtha (17, 51) Kātyāyana (ed. Kane, vv. 866 to 880) Vyāsa etc. The course of evolution in freeing individual earnings seems to have followed, as in Rome, the freeing of *Saurya-dhanam* (the earnings of valor) and *vidyā-dhanam* (the gains of science or learning), so long as they were not acquired by the use of family property, from the common estate liable to partition between co-parceners, and then extended by analogy to the fees of the sacrificial priest, gifts (*dāna*), commercial or trade earnings etc. The discussion may be followed in *Vyavahāramayūkha* (ed. Kane, pp. 124-128).

135

50, *ll.* REDUCTION IN THE NUMBER OF VALID MARRIAGES

The recommendation of Gāndharva unions for *kṣatriyas* was a recognition of realities, as kings often added women to their *antaḥ-pura*, after seduction. Inclusion of the form under marriage was in the interests of the girl. Later on, the disfavor into which it fell, owing to misuse, led to the rule that even a Gāndharva union should be subsequently sanctified by a formal celebration, with religious rites. *See* Altekar's *Position of Women in Hindu Civilisation*, pp. 34-58. Poets like Kālidāsa invested the Gāndharva union with a halo of romance, but it is probable that it was not accepted except as an unpleasant necessity, since the subsequent form of marriage ceremony would be of one who was not a virgin (*kanyā*). Commentators were hard put to explain away the rule that the bride should be a virgin, and had to interprete *kanyā*, as merely a term for the bride. The old approval by Baudhāyana of the Gāndharva form, on the ground of 'its naturally being the sequel to love' (*Snehānugatatvāt*, I, II, 13, 7) gives place to restriction of it to the military caste and to the imposition by Devala, for example, of a subsequent marriage ceremony :

Gāndharveṣu vivāheṣu punar vaivāhiko vidhiḥ ।
Kartavyas'ca tribhir varṇaiḥ samayenāgnisākṣikaḥ ॥

Devala provides for the marriage for the first three *varṇas*, implying that for the last *varṇa* the confirmatory religious ceremony was unnecessary (*vide, commentary* on Manu, VIII, 226).

136

50, *ll.* 16-17. ADOPTION

From brief rules in the older *smṛtis* of a vague nature (*Vasiṣṭha*, 15, 1-10, *Baudhāyana-paris'iṣṭha*, *S.B.E.*, XIV, pp. 334-336) a mass of discussion has grown on the topic. The valid s'āstraic justification for adoption is the necessity for a man to have a male child to perform his obsequies, and save him from falling into the hell, *Put*. A man without a son is therefore in distress (*āpadi*). On the other hand parents in poverty may want to give away their sons to childless men who would bring them up, and perhaps give the sons property, which they can not obtain from the natural parents. This also is distress (*āpad*). The power to dispose of a son is a remnant of the old *patria potestas*, for which there is sanction in the story of S'unas's'epa, told in the *Aitareya Brāhmaṇa*, whom his father sold to King Haris'candra under pinch of poverty. The power to give away a son is limited, as the act is justified, by religious necessity of a son. Hence the rule that an only son cannot be given away in adoption. A device for defeating this rule may perhaps be seen in the recognition of a son belonging to " two fathers " (*Dvyāmuṣyāyaṇa*). The filiation of an adopted son with the rights of reversioners has to be reconciled; and this leads to the rules of consent of such reversioners. As adoption is a creation by a magical act (*dattahoma*) of a new son, the principles of consanguinity and conformity to probability of parentage, if the son *can* have been a real son, arise. The disputed rule of the *Kālika-purāṇa* as to the invalidity of adopting a boy, whose *cūdā-karma* (tonsure) and initiation (*upanayana*) are already over, is perhaps an attempt to tide over the difficulty of adoptions by young men *in articulo mortis*. The whole structure has been built up by legalists.

See Ganganath Jha, *Hindu Law in its Sources*, II, 1933, pp. 217-219; and, Jolly, *Law and Custom*, ed. 1928, pp. 156-166.

137

50, *ll.* 18-32. STATUS OF WOMEN (GENERAL)

See my Ancient *Indian Economic Thought*, 1934, 53-54, and Altekar's *Position of Women in Hindu Civilisation, passim.*

In Hindu law a woman is always unfree or dependant, and is the terminus of the family. Gautama enunciated the rule (XVIII, 1) *Asvatantrā dharme strī.*

See *Manu*, V, 147-149, and IX, 2-3 ; Yājñvalkya, I, 183, 186 ; Viṣṇu, 25, 4-6.

See also Gurudoss Banerjee, *Hindu Law of Marriage and Strīdhana ;* Jolly, *History of Hindu Law*, pp. 76-81, and pp. 226, 259 (history of female property) ; and Jayaswal, *Manu and Yājña-valkya*, pp. 225-235, and pp. 256-261.

138

50, *ll.* 20-25. WORKHOUSES FOR DESTITUTE WOMEN

See Kauṭilya, II, 23, p. 114 :

Yās'ca aniṣkāsinyaḥ proṣita-vidhavā nyaṅgā kanyakā vā ātmānam bibhryuḥ ; tāḥ sva-dāsībhiḥ anusāryasopagr-ahaṃ karma kārayitavyāḥ ; svayam āgaccantīnam vā sūtras'ālām pratyuṣasi bhāṇḍa-vetanavinimayam kārayet. Sūtra-parīkṣārtha-mātraṃ pradīpaḥ.

Striyā mukhasandars'ane anya-kārya-sambhāṣāyām vā pūrva-sāhasa-daṇḍaḥ.

139

51, *ll.* 1-2. WIFE SHARES IN HUSBAND'S PUṆYA

Āpastamba (II, 16-19) :

" No division takes place between husband and wife (16). For, from the time of marriage, they are united in religious ceremonies, (18) ; likewise also as regards the rewards for works (*karma*) by which spiritual merit is acquired, and with respect to the acquisition of property." (Buehler, *S.B.E.*, II, pp. 136-137).

140

51, *ll.* 5-10. BṚHASPATI ON THE RIGHTS OF THE WIFE

See *Bṛhaspatismṛti* (ed. Rangaswami, Vyavahāra, XXVI, 92-94):

Āmnāye smṛti-tantre ca pūrvācāryais'ca sūribhiḥ ।
S'arīrārdham smṛtā bhāryā puṇyāpuṇyaphale samā ॥
Yasya noparatā bhāryā dehārdham tasya jīvati ।
Jīvatyardhas'arīre tu katham anyaḥ svamāpnuyāt ॥

The theory of the identity of husband and wife, each being incomplete without the other, is found in a passage of the *Vājasaneyi-Brāhmaṇa* cited by Kullūka in commenting on *Manusmṛti*, IX, 45. This passage is:

Ardho ha eṣa ātmanaḥ ; tasmāj-jāyām na vindate, naitāvat prajāyate, asarvo hi tāvad-bhavati. Atha, yadaiva jāyām vindate, atha prajāyate, tarhi sarvo bhavati. Tathā ca, etad-vedavido viprā vadanti—' Yo bhartā saiva bharyā smṛtā '

" A man is only half his self. When he takes a wife, he is incomplete, and so not fully born. When he takes a wife only is he fully born and becomes complete. So, Brāhmaṇas versed in the Vedas declare: ' Verily he who is known as the husband is also the wife '.

The verse of Manu, for supporting which the above passage was cited by Kullūka, is worth quoting:

Etāvāneva puruṣo yajjāyā ātmā prajeti ha ।
Viprāḥ prāhuḥ tathā caitat ' yo bhartā sā smṛtāṅganā ' ॥

The connection between the Vedic passage and the dictum of Manu is self-evident.

The equality of sons and daughters, which follows from analogy, is stated by Manu (IX, 130) thus:

Yathaivātmā tathā putraḥ, putreṇa duhitā samā ।
Tasyām ātmani tiṣṭantyām, katham anyo dhanam haret ॥

"The son and one's self are identical. The daughter is equal to the son. So when she, as one's self remains, how can any one else take the estate?"

It is a great progress to this stage from Āpastamba (II, 14, 4) who placed the daughter in the line of inheritance after not only the sons but the teacher and his pupils. (The *sūtra* runs "Or, the daughter." Haradatta says that according to some writers the succession of daughters is on failure of sons, and that others hold that the daughter comes after the pupils of the *guru*, who, according to an earlier *sūtra*, inherits on failure of sons and *sapiṇḍas*. Buehler holds the second to be the correct interpretation of Āpastamba's view.) (*S.B.E.* II, p. 132, n.).

141

51, *ll.* 11-12. Right of Unmarried Daughter to Expenses of Marriage

The brother should spend from his share of the paternal estate atleast one-fourth on the marriage of his sister. This is the rule in both Manu (IX, 118) and Yājñavalkya, (II, 124):

(*a*) *M. Svebhyo ams'ebhyastu kanyābhyaḥ pradadur-bhrātaraḥ pṛthak* ।
Svāt-svādamsāccaturbhāgam patitāḥ syur-aditsavaḥ ॥

(*b*) *Y. Asamkṛtāstu samskāryā bhrātṛbhiḥ pūrvasamskṛtāḥ* ।
Bhaginyas'ca nijādams'āt dattvāms'am tu turīyakam ॥

The rule of proportion laid down here was capable of different interpretations, and, as described by Dr. Altekar (*loc. cit.*, p. 290-291), might lead to anomalies. The intention of the jurists is stated by Devala as making provision for the daughter's marriage (*Smṛticandrikā*, p. 625). *Vīramitrodaya* (Vyavahāra, p. 582) holds that a brother should spend an amount equal to his share if the fourth reserved for his sister's marriage proves insufficient. Nārada (XIII, 34) rules that a brother should meet the expenses from his own earnings if there is no ancestral property:

Avidyamāne pitrārthe svāms'amudhṛtya vā punaḥ ।
Avas'yakāryāḥ samskāraḥ bhrātṛbhiḥ pūrvasamkṛtaiḥ ॥

That the marriage expenses of the daughter were a charge on the family was established in Kauṭilya's time, (p. 161):

Sanniviṣṭa-samam asanniviṣṭebhyo naives'anikam dadyuḥ: kanyābhyas'ca pradānikam

i.e. "Brothers who are unmarried should be given as much as the cost of marriage of the married brothers; and unmarried daughters shall be given what is payable at their marriage."

Kauṭilya logically includes dowry in marriage expenses.

142

51, *ll.* 17-19. Marriage an Obligation to Woman

Brahmanism laid stress on the value of married life for the due performance of religious rites, and the status of the householder (*gṛhī*) was ennobled. This is indicated in *Manusmṛti*, II, 77:

Yathā vāyum samās'ritya vartante sarva-jantavaḥ |
Tathā gṛhastham ās'ritya vartante sarva ās'ramāḥ ||

Hence, the *Taittrīya Brāhmaṇa* (II, 2, 2, 6) declared that the wifeless person (widower or bachelor) was without *yajña* (*a-yajñiko vā eṣa yo apatnīkah*). The *Mahābhārata* (*Ādi*. 114, 36) told a story to the effect that the husband-less woman was sinful. The obligatory nature of marriage to women is illustrated by a verse of *Yamasmṛti* to the effect that a father should give a grown up maiden in marriage to a good man, if available, and if not even to a bad man:

Dadyāt guṇavate kanyām nagnikām brāhmacāriṇe |
Api vā guṇahīnāya noparundhyāt rajasvalām ||

The praise of the wedded estate is thus made by Vasiṣṭha:

Gṛhastha eva pravrajet, gṛhastha stūyate yataḥ |
Caturṇām ās'ramāṇām tu gṛhasthastu vis'isyate ||
Sarveṣām api vai teṣām veda-smṛti-vidhānataḥ |
Gṛhastha ucyate s'reṣṭaḥ sa trīn etān bibharti hi ||

The *upanayana* of women was prohibited by Yājñavalkya (I, 13); and their rites upto marriage were to be done without Vedic

mantras. Marriage was the *samskāra* for women, and it was to take the place of *upanayana*, according to Manu (II, 67):

Vaivāhiko vidhiḥ strīṇām samskāro vaidikaḥ smṛtaḥ ।
Patisevā guror-vāso gṛhārtho agniparikriyā ॥

143

51, *ll.* 20-24. ALLEGED BUDDHIST INFLUENCE IN SECURING SEX EQUALITY

Dr. K. P. Jayaswal, *Manu and Yājñavalkya*, pp. 234-235, argues that the mind of the Brahmin lawyer was touched by the inferiority of women as compared with men in inheritance etc., *because* the Buddhists recognised the right of women equally with men to entry into the monastic order. The assumption is incorrect. Hinduism does not make women spiritually inferior to man, even though it does not encourage spinsterhood or asceticism for women. Jainism made a distinction between the spiritual capacity of man and woman (E. W. Hopkins, *Religions of India*). That the ascetic life should not be undertaken by girls without due spiritual urge was the Hindu view. The *Mahābhārata* mentions a woman, named Sulabhā, who practised austerity and remained unmarried so as to achieve salvation (XII, 325, 103):

Sāham tasmin kule jātā bhartaryasati madvidhe ।
Vinītā mokṣadharmeṣu carāmyekā munivratam ॥

144

51, *ll.* 24-25. INDISSOLUBILITY OF MARRIAGE

Divorce (*mokṣa*) has to be distinguished from separation (*tyāga*). Manu lays down the indissolubility of marriage in the following śloka (IX, 101):

Anyonyasya avyabhīcāro bhaved-āmaraṇāntikaḥ ।
Eṣa dharmaḥ samāsena jñeyaḥ strī-pumsayoḥ paraḥ ।

"'Let mutual fidelity continue till death,' this may be considered the highest law for husband and wife."

The survival of the marriage tie even after death is one of the inducements held out to women persuaded to commit *sati* :

Tisraḥ-koṭi-ardhakoṭī ca yāni romāṇi mānuṣe ।
Tāvat-kālam vased-svargam bhartāram yānugaccati ॥
Vyāla-grāhī yathā vyālam bilād-uddharate balāt ।
Evam uddhṛtya bhartāram tenaiva saha modate ॥
(*Parās'arasmṛti*, IV, 31-32).

The rules of Yama, S'ātātapa, and Kātyāyana allowing a girl married to an improper person to remarry again, are explained away by Mādhavācārya (*Parās'arasmṛti*, vol. I, pt. 2, pp. 90-91) as relating to other *yugas* and as inapplicable to the present times :

So ayam punar-udvāho yugāntara-viṣayaḥ. Tathā ca Āditya purāṇe :
Ūḍhāyāḥpunarudvāham jyeṣṭāms'am go-vadham tathā ।
Kalau pañca ha kurvīta bhṛatṛ-jāyām kamaṇḍalum ॥

Kauṭilya accepted the rule that in *Dharma-vivāha* (the first four forms of marriage) there could be no divorce :

Amokṣo dharma-vivāhāñām. (p. 155)

But if the husband and wife hate each other and agree to release one another they can do so.

The rules allowing remarriage of widows and women whose husbands have long not been heard of etc , which were probably operative once, have been explained as interdicted for this age. Among them is the famous rule of Nārada (XII, 67) :

Naṣte mṛte pravrajite klībe ca patite patau ।
Pañcasu āpatsu nārīṇām patir-anyo vidhīyate ॥

145

51, *l.* 27. CONDEMNATION OF PROLONGED CELIBACY

Dīrgha-brahmacaryam is one of the *Kalivarjyas*, according to *Bṛhan-nāradīya-purāṇa* (cited in *Dharma-pradīpa*, p. 50) :

· *Dattākṣatāyāḥ kanyāyāḥ punar-dānam parasya ca* ।
· *Dīrgha-kālam brahmacaryam naramedhās'vamedhakau* ॥

The relevant clause prohibiting prolonged study and celibacy (which are involved in *Brahmacarya*) is cited from the *Brahma-purāṇa* in Mādhavācārya's *bhāṣya* on *Parās'ara-smṛti* (vol. I, pt. 1, p. 133, Islampurkar's ed.)

The authors of the *Dharma-pradīpa* explain that the interdiction of prolonged *brahmacarya* of 24 years and more prescribed in the *Gṛhyasūtras* is impracticable at present (p. 53).

Manusmṛti (III, 1-2) lays down that one should have studied the three Vedas, or two, or atleast one before entering the order of householder (*Gṛhastās'rama*) and that the vow of studying the Vedas, must be kept for 36, 18, or 9 years, or until the student has learnt the Veda perfectly. Manu's dictum in regard to the duration of *brahmacarya* is identical with the dicta of all *smārtas*, with the exception of Baudhāyana, (I, 2, 3, 1-5) who prescribes periods of forty-eight years, or twenty-four years, or twelve years for each Veda studied, or atleast one year for each *Kāṇḍa* of the Veda studied, or till the Veda has been mastered. He cites the Vedic injunction that one should kindle the sacred fire when one's hair has not turned grey (*Jāta-putraḥ kṛṣṇa-kes'o agnim ādadhīta*) 'lest the duty of offering the *S'rauta Agnihotra* be neglected', for, as he himself remarks, 'life is uncertain'. This extra-ordinarily long period of *brahmacarya* is taken up by S'abara-svāmin's (I, iii, 2) discussion, as the *s'ruti* (cited) and the *smṛti* (Baudhāyana) are in conflict. S'abara holds that the *smṛti* rule is invalid, and he is in line with the later *smṛtis* which include *dīrgha-brahmacarya* among the interdictions of the present age (Kaliyuga). Kumārila attempts a reconciliation by suggesting that the *dīrgha-brahmacarya* rule is for those who are physically unsound and not quite fit for married life, but who are unable to remain celibate through lack of self-control. A text from the *Atharva-veda* is cited in support of the rule to which Baudhāyana has given his adherence, to show that S'abarasvāmin's summary rejection of it is untenable.

146

51, *l.* 28. PRAISE OF GṚHASTHĀS'RAMA

For the panegyric on the house-holder's life see: *Manusmṛti*, III, 77-80: (Buehler's trn.)

" As all living creatures subsist by receiving support from air even so (the members) of all orders susbsist by receiving support from the householder. Because men of the three (orders) are daily supported by the householder with (gifts of) sacred knowledge and food, therefore (the order) of householders is the most excellent order. (The duties of) this order, which cannot be practised by men with weak organs, must be carefully observed by him who desires imperishable (bliss in) heaven, and constant happiness in this life, the sages, the manes, the gods, the Bhūtas, and guests ask the householders (for offerings and gifts); hence he who knows (the law) must give to them (what is due to each) ".

For parallel passages, see *Vasiṣṭha*, VIII, 14-16, and *Viṣṇu*, LIX, 27-29.

147

52, *ll.* 1-2. THE WIDOW'S POWER OF ALIENATION

The relevant texts of Kātyāyana have formed the basis of discussion by the digests. These are arranged as under by Mr. Kane in his reconstruction of Kātyāyana:

Āsurādiṣu yallabdham strīdhanam paitṛkam striyā ।
Abhāve tadapatyānām mātā-pitros-tadiṣyate ॥ (920)

That *Strīdhana* which was obtained by a woman from her parents in the forms of marriage beginning with the *āsura* is desired (held) to go to her parents on failure of her progeny.

Aputrā s'ayanam bhartuḥ pālayantī gurau sthitā ।
Bhuñjīta āmaraṇāt kṣāntā ; dāyādā ūrdhvam āpnuyuḥ ॥ (921)

A sonless widow, preserving the bed of her husband unsullied, and residing with her elders, and being self-controlled (or forbearing)

should enjoy her husband's property till her death. After her death, the other heirs of the husband will succeed to it.

Svaryāte svāmini strī tu grāsācchādana-bhāginī I
Avibhakte dhanāms'am tu prāpnoti āmaraṇāntikam II (922)
Bhoktumarhati kḷptāms'am guru-s'us'ruṣane ratā I
Na kuryād yadi s'us'rūṣām caila-piṇḍe niyojayet II (923)

When her husband is gone to heaven, the wife is entitled only to food and raiment, if her husband was not separated, or she may get a share in the ancestral wealth till her death. The widow intent on serving her elders, is entitled to enjoy the share allotted to her; if she does not serve her elders, only food and clothes should be given her:

Mṛte bhartari bhartṛams'am labheta kulapālikā I
Yāvad-jīvam; na hi svāmyam dānādhamana-vikraye II (924)
Vratopavāsaniratā brahmacarye vyavasthitā I
Damadānaratā nityam aputrāpi divam vrajet II (925)

'A wife who seeks the honor of the family gets the share of her husband till her death; but she has no power of gift, mortgage or sale. A widow engrossed in religious observances, fixed in celibacy, always self-restrained, and making gifts goes to heaven, even though she is sonless.'

These rules give the widow only a life-interest in her husband's estate, and they form the foundation of the modern right of the Hindu widow to her husband's estate, and after her the reversioners. The rules are old, as Kauṭilya (p. 153) lays down identical injunction:

Aputrā patis'ayanam pālayantī guru-samīpe s'trīdhanam āyuḥkṣayat bhuñjīta; āpadartham hı strīdhanam; ūrdhvam dāyādam gaccet. (III, 2)

The rules were interpreted so as to allow the widow to incur expenditure of various kinds, *e.g.*, gifts on the ground of the spiritual benefit accruing therefrom to her and to her husband, religious

expenditure etc. The extension is made in *Vyavahāra-mayūkha* (Kane's trn, p. 152) in explaining rule 920 of Kātyāyana:

"The text refers to a prohibition of gifts and the like intended for bards (*vandi*), panegyrists (*cāraṇa*) and the like. But gifts for unseen (*i.e.* spiritual) purposes and mortgages and the like conducive to those purposes are valid, on account of the rule (*viz.* 925) of Kātyāyana".

Some of the verses of Kātyāyana cited above are ascribed to *Yama* by the *Smṛticandrikā* (Vyavahāra, pp. 665 seq.)

Devaṇṇa Bhaṭṭa, the author of the *Smṛticandrikā* also extends the power of the widow to make gifts etc., in spite of the apparent limitation of her power: (trn. Krishnaswami Aiyar, 1867, pp. 169, 170).

"The competency of the widow to make gifts for religious and charitable purposes, such as the maintenance of old and helpless persons, being sanctioned by law, the above passage must be held as contemplating the want of independence of a widow in making gifts etc. for purposes not being religious or charitable, but purely temporal, such as gifts to dances and the like. A widow thus possesses independent power to make gifts for religious objects, and therefore the same author enjoins the constant presentation of gifts by a widow for religious purposes. . . . The daily making of such gifts will be impracticable if the widow were held to possess no independent power. It is hence to be understood that the law does not deny the independent power of a widow even to make a *mortgage* or *sale*, for the purpose of providing herself with the necessary funds for the discharge of religious duties."

148

52, *ll.* 1-5. DIVORCE OPEN TO NON-BRĀHMAṆAS

Cf. Dr. Altekar (*op. cit.* p. 102):

"Divorce went out of vogue only in the higher sections of Hindu society. The *S'ūdra-kamalākara*, written in the 17th century, expressly permits it to S'ūdras and other lower castes." Kamalākara relies on a rule of *Nārada* (not found in Jolly's edn.):

Na Sūdrāyāḥ smṛtaḥ kāla, na ca dharma-vyatikramaḥ |
Vis'eṣato aprasūtāyāḥ striyāḥ samvatsarād-vidhiḥ ||

The verse ends *samvatsaraparā sthitih* in *Nāradīya-Manu-samhitā*, (ed. Trivandram, 1929) p. 145.

Kauṭilya limited divorce to the forms of marriage other than the first four, which were in use by non-Brāhmaṇas only (III, 4 or p. 155).

149

52, *ll.* 6-10. KALIVARJYA

See Note 128, *ante* (pp. 163-164) on the relaxations of *Yuga-dharma.*

The rules interdicting certain ancient practices on the ground of their unfitness for the weakened men of the present age are generally cited as *Kalivarjya* and are to be found in the Purāṇas and some of the later *smṛtis.* In the *Vanaparva* (clix, 11-34) of the *Mahābhārata* an account of the gradual decline of power and *dharma* from *yuga* to *yuga* is described. Some of the practices of the ancients may prove repugnant to present day conscience. But they should not be condemned on that account. Thus *Parās'arasmṛti* (I, 33).

Yuge yuge ca ye dharmās tatra tatra ca ye dvijāḥ |
Teṣām nindā na kartayā yuga-rūpā hi te dyijāḥ ||

Thus, we should not condemn the injunction of Manu (VIII, 371) that the wife, who proud of her virtues or birth contravenes the directions of her husband should be thrown by the king to the dogs to be devoured by them. It refers to a different age.

Mādhavācārya collected a number of texts on *Kalivarjya* and these have been printed in his edition of *Parās'arasmṛti* (I, i, pp. 131-137) with valuable comments of his own by the late Mahāmahopādhyāya Vāman Sāstri Islāmpūrkar. Hemādri, *Madanapārijāta* and other authorities give quotations on *Kalivarjya.* In the recently published *Dharmapradīpa* (pp. 50-53, and pp. 232-244) a list of the inhibitions of the Kali-yuga is given and the premissibility of such practices as the remarriage of widows, for which *smṛti* sanction may be cited, in the present age, is discussed.

The most accessible collection of practices inhibited for the Kaliyuga is that of Mr. P. V. Kane, in a paper on *Kalivarjya,* which he contributed to the Eighth Oriental Conference. He has catalogued 49 practices as so forbidden, and stated in each case the older authority, enjoining or allowing the practice condemned later as *Kalivarjya.* He holds that the doctrine of decadence as time passes is referred to in *Ṛgveda,* X, 10, 10, where in the famous dialogue between Yama and Yamī the former is reported as saying : " those later ages are yet to come when sisters will do what is not sister-like." The *Nirukta* implies the decadence in the contrast it makes between the intuitive knowledge of *Dharma* which ancient sages had and the later had not : (I, 20)

Sākṣāt kṛtadharmaṇa ṛṣayaḥ babhūvuḥ te avarabhyo asākṣātkṛta-dharmasya upades'ena mantrān samprāduḥ ।

The doctrine of decadence is expressed in *Āpastamba* (II, 6, 13, 7-9) and *Gautama* (I, 3-4). The idea is that the sages of old who committed many transgressions, which are against the *s'āstras,* incurred no sin thereby, because of their spiritual powers, and that if one of the present age, who does not possess such spiritual greatness, commits the same offences he will surely be sinful.

Mr. Kane conjectures that in the five or six centuries preceding the Christian era the theory of the four *yugas,* their characteristics and of the progressive moral decline from *yuga* to the *yugas* following, was fully developed. He also holds that the theory of inhibitions of the *Kali-yuga* began to be current about the fourth century A.D. The *yuga* theory appears in its full-fledged form in the *Mahābhārata* (Vanaparva, ch, 149 and 183), *Manu* (I, 81-86) and some *Purāṇas* *e.g. Matsya,* ch. 142-143, *Brāhma,* ch. 122-123 and *Nāradīya,* pt. I, ch 41. The earliest incription mentioning the sins of *kali-yuga* is one of the Pallava king Simhavarman (*Epig. Ind.,* VIII, p, 162 : *Kaliyugadoṣāvāsanna-dharma-uddharaṇa-nitya-sannaddhasya*).

Āpastamba's rejection of the old rule of giving all property to the eldest son as opposed to *s'āstras*

(*s'āstraiḥ vipratiṣiddham,* II, 6, 14, 10)

may be based on the *kalivarjya*, idea, through he does not expressly mention it. *Uddhāra-vibhāga* or giving a larger share to the eldest son on partition was known to early *smṛtis* (*Gautama*, xxviii, 5-7, *Baudhāyana*, II, 3, 9) and is sancioned by *Manu* (I, 112 and 1170, but it is one of the *Kalivarjyas*. It is noteworthy, as indicative of the want of unanimity as regards what is or what is not properly prohibited for the *Kali-yuga*, that 'Medhātithi, after' mentioning the *uddhāra-vibhāga* as *kalivarjya* according to some, rejects the prohibition.

When an authority allows a practice and another condemns it two ways of reconciling them, without rejecting the claim of either to count as authority, are open : one is to see in the opposition an option to follow the one or the other, and the other is to reject the older in favour of the newer rule, on the ground that the practice allowed by the former is *Kali-varjya*.

150

52, *ll.* 10-12. CANDRAGUPTA'S MARRIAGE TO HIS BROTHER'S WIDOW

The story is given in an extract from a lost drama of Visākhadatta, named *Devī-Candragupta*, which has been discovered in fragments in works on dramaturgy like *Nātya-darpaṇa*, and is confirmed by an explanatory passage in S'aṅkarārya's commentary on Bāṇa's *Harṣacarita*, which contains an allusion to the slaying of the libidinous S'āka king by Candragupta disguised as a woman. The story is that the S'āka ruler desired Rāmagupta, the elder brother and predecessor of Candragupta, to send to his harem the queen Dhruvadevī, that Rāmagupta pussilanimously agreed and sent the queen, whom Candragupta rescued after slaying the enemy. According to the *Mañjus'rīmūlatantra*, Rāmagupta was killed by Candragupta, who married his sister-in-law the widowed queen, Dhruvadevī. (See Jayaswal, *Imperial History of India*, 1934, p. 35, R. D. Banerji, *History of India*, 1934, pp. 168-9, and Dr. V. Raghavan's critical summary of the discussion in the *Journal of the Benares Hindu University*, 1937).

151

52, *ll.* 14-19. GRADUAL DISAPPEARANCE OF NIYOGA

Niyoga, the custom of a brother raising off-spring for a brother on his wife, is accepted by Baudhāyana (II, 2, 17, 62,) Gautama, XVIII, 4-14, Vasiṣṭha, XVII, 14, 55-56, *Viṣṇusmṛti* XV, 3, Manu, IX, 56-63, 143-147, Yājñavalkya, II, 127-128, Nārada, XII, 80-88, and Hārita, IV, 17. In the *Mahābhārata*, we find cases of *Niyoga* applied to a wife, when the husband is alive. Later in the *Smṛtis* it is restricted to the widow. Its use in the Epic for widows was common (XIII, 12, 23):

Nārī tu patyabhāvevai devaram kurute patim |

There was no restriction in the Epic on the number of off-spring that might be raised by *niyoga* on a woman. Later, it was limited to one son only. The Epic says that Kuntī protested against being asked to submit to *Niyoga* more than once (*Ādi*, 132, 63-64) on the ground of contravening *Dharma*. Earlier, three sons were allowed to be raised (*ibid.* I, 126). It was tantamount, as Dr. Altekar has pointed out (*op. cit.* p. 172), to a virtual marriage as the birth of girls did not count for discontinuance.

Āpastamba is the earliest *smārta* to condemn it. He held that the spiritual benefit would go to the begetter and not the putative father (II, 6, 13, 8). Manu condemned the practice as animal, (*paśudharma*, IX, 66 ff.). The restrictions proceed by limiting the duration of *niyoga* to the birth of two sons (*Manu*, IX, 61), and afterwards generally to one son. The use of the device, if there were children already, was interdicted (*Baudhāyana*, II, 20). The disposition to use it for satisfying the carnal appetite is condemned by Nārada (XII, 80-88). The application of it for reasons of cupidity is condemned by Vasiṣṭha (XVI, 57):

Lobhān-nāsti niyogaḥ |

The popularity of adoption as an alternative, and stricter ideas of morality, outraged by the practice, led to its being included among the *Kalivarjyāḥ* in the enumeration of which it usually leads. (*Dharmapradīpa*, pp. 50-53).

152

52, *ll.* 21-22. PROHIBITION OF HYPERGAMOUS UNIONS

In Mādhavāçārya's bhāṣya on *Parās'arasmṛti* there is reference to the homage due from a pupil to the *asavarṇa* or inferior caste wives of the *guru* (vol. I, pt. i, 328). But such unions are rejected in the present age as *kalivarjya*. Thus the *Bṛhannāradīya* (cited in *Dharma-pradīpa*, p. 50) says:

Samudra-yātṛsvīkāraḥ kamaṇḍalu-vidhāraṇam |
Dvijānam asavarṇesu kanyāsūpagatam tathā ||

153

52, *ll.* 30. GROWTH OF BELIEF IN MAGICAL PRACTICES

Belief in the efficacy of magic and witch-craft, which is natural in a primitive age, is reflected in the *Kauṭilīya* (IV, 3, 4 and XIII, 32 etc.) In fact there was wide-spread belief that it was owing to Kauṭilya's own powers as a magician that the Nandas were overthrown and Candragupta enthroned in their stead. Kāmandaka, who belongs to the Gupta epoch, alludes to this belief, in which he shared:

Jātavedā ivārciṣmān vedān vedavidāmvaraḥ |
Yo'dhītavān sucaturaḥ caturopyekavedavat ||
Yasyābicāravajreṇa vajrajvalanatejasaḥ |
Papātāmūlataḥ s'rīmān Suparvā Nandaparvataḥ ||
Ekākī mantras'aktyā yaḥ s'aktyā S'aktidharopamaḥ |
Ājahāra nṛcandrāya Candraguptāya medinīm ||

"Who, by his genius mastered the *four* Vedas as if they were only one; who, by the blazing thunder-bolt of his magic, completely overthrew the mountain-like Nanda; who, single-handed by force of his intelligence (*or* magical spells) and with a prowess like that of the wielder of S'akti (*i.e.*, Kārtikeya, the general of the gods) won the earth for Candragupta, delightful like the moon to men."

It will be noted that the reference stresses Kauṭilya's mastery of the *Atharva-veda*, the Veda of spells and incantations. The

importance of the *Atharvavéda* for the royal preceptor is indicated in the description by Kālidāsa of the sage Vasiṣṭha as *atharva-nidhi* (*Raghuvams'a*, I, 59). The *Mahābhārata* (XIII, 105, 14-45) declares the royal *purohita*, who knows the *Atharva* spells, as worth ten *ācāryas* (E. W. Hopkins, *Great Epic of India*, 1902, p. 380). *Manusmṛti*, which discountenances wrong practices (*vāmācāra*) alludes to the efficacy of magic (III, 59) when it declares that the house in which women pronounce a curse for not being honoured will perish completely as if destroyed by magic. Manu also empowers the oppressed Brāhmaṇa to "use in incantations the sacred texts revealed by Atharvan and by Angiras" (XI, 33). Buddhist and Jaina monks were forbiḍden to practise it, but apparently the prohibition was ineffective as Vis'ākadatta (in the *Mudrārākṣasa*) refers to its practice by a Buddhist ascetic Jīvasiddhi. The incursions of Shamanist hordes, like those of the S'ākas and the Kuṣāns, should have given an impetus to the practice of witchcraft. Bāṇa describes a weird midnight incantation by Bhairavācārya seated on the chest of a corpse in a cremation ground for obtaining the position of a *vidyādhara*, and the dawn of prosperity to the line of *Puṣyabhūti*, the prince of Sthānes'vara (Thanesar) as the reward for protecting the wizard. The Purāṇas, especially the *S'aiva*, and the *tantras* popularised magic. The *Kādambarī* and the *Das'akumāracarita* contain allusions to magic and its efficacy. The spread of *S'akti* worship emphasised the popular belief in magic, which has always lurked on the country-side.

154

52, *ll*. 24-32 and 53, *ll*. 1-4. SATĪ OR SAHAMARAṆA OR ANVĀROHAṆA

Kauṭilya condemns suicide of every kind and penalises it by post-mortuary punishments, designed to act as deterrents, and by punishments for those who defend suicide. The verses of Kauṭilya on the subject are these: (IV, 7, *end*):

Rajju-s'astra-viṣair-vāpi kāma-krodha-vas'ena yaḥ |
Ghātayet svayam ātmānam strī va pāpena mohitā ||

Rajjunā rājamārge tān caṇḍālena apakarṣayet |
Na smas'ānavidhisteṣām na sambandhikriyāstathā ||
Bandhus-teṣām tu yaḥ kuryāt preta-kārya-kriyā-vidhiṃ |
Tad-gatim sa caret pascāt sva-janād-vā pramucyate ||
Samvatsarena patati patitena samācaran |
Yājanādhyāpanād-yaunād taiscānyo api samācaran ||

The reference in the passage to *Sati* is both implied and explicit (*strī vā pāpena mohitā*). Dr. Altekar's statement that Kauṭilya does not mention the custom (*op. cit.* p. 140) is not correct.

The self-immolation of Kalanos, which the Greek writers mention, though of a sage, suggests the existence of similar practices among women also.

Viṣṇusmṛti (C. 100 A.D.) merely mentions the custom as an alternative to *brahmacarya* (*mṛte bhartari brahmacaryam tadanvārohaṇam vā*, (XXV, 14) and adds that a widow by joining her husband on the pyre accompanies him (XX, 36) :

Mṛtopi bāndahavaḥ s'akto nānugantum priyam janam |
Jāyāvarjam hi sarvasya yāmyaḥ panthā viruddhyate ||

The Brāhmanical revival during the Gupta period led to its coming into prominence. Bhāsa has some characters who commit *sati*. Kālidāsa knows it, and so does S'ūdraka as well as of course Vātsyāyana. An inscription of A.D. 510 mentions the *sati* of the wife of a general killed in battle (*Gupta Inscriptions*, ed. Fleet, p. 93). Harṣa's mother died a *sumangalī* by burning herself before her husband's death (which is suicide, not *sahamaraṇa*) and his sister Rājya-s'rī was just saved as she was about to ascend the pyre. In the epoch of Rājput dynasties it gains support. It is the age of the late *smṛtis*. Critical writers like Medhātithi discounted it as opposed to the injunction against suicide. His remark on *Manusmṛti*, V, 156, is worth citing :

Pumvat strīṇām api pratiṣiddha ātmatyāgaḥ. . . . Satyām api pravṛttau na dharmatvam, evam iha (anumaraṇe) api na sāstrāyatvam . . . kim ca pratyakṣa-s'ruti-virodho

ayam-; ato astyeva patim anumaraṇepi striyāḥ pratiṣedhaḥ (Jha's ed. I, p. 492).

Devaṇṇa Bhaṭṭa condemns it as (*Vyavahāra*, in *Smṛti-candrikā*, ed. Mysore, p. 598), as an 'inferior *dharma*,' (*nikṛṣṭa-phala*).

Bāṇa naturally condemned it as the courtier of Harṣavardhana (A.D. 606-649) in *Kādambarī*, I, p. 308, ed. Nirṇayasagara,) in view of the known views of his master, whose mother had become *sati*. The *Rājataraṅgiṇī* refers to many cases of *sati* in Kāṣmir (VII, 481, 490, 858, 1380, 1486; VIII, 448, 1447; V, 206).

"Tantra writers also joined the crusade. They pointed out that woman was the embodiment of the Supreme Goddess, and boldly declared that if a person burnt her with her husband he would be condemned to eternal hell" (Altekar, p. 1, *op. cit.* p.147).

Bṛhaspati describes the *pativratā* (chaste wife) thus:

Ārtā ārte, mudite hṛṣṭā, proṣite malinā kṛs'ā ।
Mṛte mriyeta yā patyau, sā strī jñeyā pativratā ॥

The description of the wife as dying when the husband dies may be poetic exaggeration or a reference to *sati*. (*Sams.* 483).

Aparārka marshals the authorities for *Sati*, and appears to defend it (see p. 111, passage beginning '*Imā nārī avidhava*'). The chief *smṛti* authorities in favour of the practice are Angiras, Hārīta and Vyāsa. Aparārka (p. 112) quotes four writers, who prohibit brāhmaṇa widows from offering *sati*, and one of them curiously is Angiras:

Yā strī brāhmaṇa-jātīya mṛtam patim anuvrajet ।
Sā svargam ātmaghātena nātmānam na patim nayet ॥

Paithīnasī corroborates the dictum of Angiras and states that *saha-maraṇa* is the rule for others than brāhmaṇa wives:

Mṛtānugamanam nāsti brāhmaṇyā Brahmas'āsanāt ।
Itareṣām tu varṇānām strīdharmo ayam paraḥ smṛtaḥ ॥

Kamalākara Bhaṭṭa's mother Umā committed *sati* (Kane, p. 432). Nīlakaṇṭa was his cousin. The illustrious example of a *sati* in the family is a proof of their conviction of its s'āstraic character, apart from verbal defence.

Mādhavācārya's defence of *Sati*, as not opposed to such Vedic precepts as those contained in *Īsa-upaniṣad*, 3, that those persons who commit suicide reach after death a world of intense darkness, named *Asūrya-loka*, is contained in his comment on *Parās'ara-smṛti*, II, 32 (Vol. II, pt. i, p. 55, Islampūrkar's edn.). His defence is natural, in the Brāhmaṇa revival that synchronised with the foundation of Vijayanagar.

The holocaust following the death of Gāngeyadeva of Cedi at Prayāg in A.D. 1038 is mentioned in an inscription published in *Epigraphia Indica*, II, p. 3.

The *sati* of large numbers after the death of a ruler came to mark social distinction. "When Ajit Singh of Mārwār died in 1724, 64 women burnt themselves on his funeral pyre. When Rājā Budh Singh of Būndi was drowned, 84 women became *sati*" (Tod's *Annals of Rājasthān*, II, ed. Crooke, p. 837). "When Ranjit Singh of Lahore died, four queens and seven concubines ascended the funeral pyre. . . . Three women died with Mahārājā Kharag Singh, five with Basant Singh, eleven with Kis'ori Singh, twenty-four with Hīra Singh, and 310 with Sucet Singh." (Altekar, *op. cit.*, p. 155).

155

53, *ll.* 13 to 54, 18. TREATMENT OF UNCHASTE AND ABDUCTED OR OUTRAGED WOMEN

Hindu law took a strict view of unchastity, when it was voluntary, whether in man or women. Āpastamba imposes a deterrent punishment on the unfaithful husband, by ruling that his expiation is wearing the hide of a donkey for six months, and begging from door to door in that guise, everywhere announcing his offence, (I, 9, 18) :

Dāravyatikramī kharājinam bahir-loma paridhāya dāra-vyatikramine bhikṣāmiti saptāgarāṇi caret. Sā vṛttiḥ ṣaṇ-māsān.

The direction to wives to treat their husbands with meekness and forbearance is not coupled with any reduction of rigor in the treatment of an unchaste husband.

In the Vedic age, unchaste women were allowed to take part even in sacrifices after mere confession (*Satapatha Brāhmaṇa*, II, 5, 2, 20). The leniency was continued by *Vasiṣṭha* (XXVIII, 2):

Svayam vipratipannā . . . na tyājyā !

Kauṭilya (p. 230) provides a punishment for a man who defiles the daughter of his own male or female slave, and makes the adulterer responsible for the payment of a suitable nuptial fee to enable the girl to be married. He also rules that when a man has sexual relation with a woman held as slave on account of money due from her, he has not only to be fined but to provide for her clothes and maintenance. According to *Yājñavalkya*, II, 290, a brāhmaṇa having intercourse with a slave woman, even though she is of lower caste, is to be punished. By a rule of Kātyāyana of general applicability, which is therefore applicable to adultery also, women should pay only half the fine that men should pay for the offence, and where the penalty is death in the case of men, women should be left off with mere mutilation. (*v*. 487 of Kane's edn.) The concession is on the score of the defenceless position of women, which calls for leniency.

The idea that the man is more to blame than the woman in such cases is also implicit in the *Mahābhārata* (XIII, 58, 5) rule that in cases of adultery or rape between persons of the same caste, the woman should not be turned adrift (*tyājyā*), unless she has conceived.

A wet-nurse (*dhātrī*) is placed by Nārada (XV, 73-75) in the same class as the mother, mother's sister, mother-in-law, maternal uncle's wife, paternal aunt, pupil, sister's female companion, daughter, preceptor's wife, a women of the same *gotra*, a suppliant woman, the queen, a female ascetic, and a chaste woman of the highest caste, as a person whose violation will constitute an inexpiable offence for which there is no punishment lower than the

removal of the offending organ (cited by Aparārka, p. 857). The idea is that the abuse of a woman who has placed herself under protection is specially heinous. It is equated with incest.

The punishment for theft being death, and abduction of a woman being theft, it was punishable capitally. *Vyāsa* (cited in *Vyavahāramayūkha*, p. 135) includes the theft of women in nine kinds of theft. The same *smṛti* rules (*ib.* p. 236) that the abductor of a woman (*strī-hartā*) should be burnt in a raging fire bound to an iron bedstead :

Strī-hartā lohas'ayane dagdhavyo vai kaṭāgninā ।

In the *Nāradapariś'iṣṭa* (28) it is ruled that the entire property of a man should be confiscated if he abducts a woman, and he should suffer death if he abducts a virgin girl :

Sarvasvaṃ harato nārīṃ, kanyāṃ tu harato vadhaḥ ।

The abduction of a married woman is held by Bṛhaspati to be a crime of violence (*sāhasa*) as well as theft, and Nārada (XVII, 6) holds it to be among the most heinous crimes.

The *ātatāyin*, the most culpable offender known, being usually a synonym for assassin, is classed with the committer of arson, the poisoner, the armed robber, and the violent robber of land *and women*. The punishment for the *ātatāyin* is death, according to *Manu*, (VIII, 350) and *Vasiṣṭha* (III, 17), and he who slays him when caught red-handed can not be punished by the king, even if the culprit who has been slain is a learned Brāhmaṇa. Later on this was explained away as inoperative in the Kaliyuga in the case of Brāhmaṇas, though its applicability for offenders of other castes was conceded. By a rule of Kātyāyana (*v.* 830 ed. Kane) rape was to be punished by the king with death :

Strīṣū kṛtopabhogasyāt prasahya puruṣo yathā ।
Vadhe tatra pravarteta, kāryātikramaṇam hi tat ॥

When tenderness for a Brāhmaṇa offender began to be shown by *smartas* the rule was made applicable only to non-Brāhmaṇas. (*Vyavahara-mayūkha*, p. 224 and *Vīramitrodaya*, p. 504.)

Unchastity, according to *Manu* (XI, 60) is an *upa-pātaka*.

The expiation prescribed for it (*ib.* 118) is *govrata* and *cāndrāyaṇa.* According to *Manu* (XI, 177-178) an unchaste wife should be merely confined to the house and made to undergo these penances; and by the general rule, already cited (*infra* p. 269 note) her penance will be half of what one of the male sex will have to perform.

A ravished woman is in result unchaste. But she must be maintained.

Kauṭilya deprives the habitually unchaste woman only of subsistence in excess of 2000 paṇas. (Trn. Shāma S'āstri, 1915, p. 199).

156

REHABILITATION OF ABDUCTED OR OUTRAGED WOMEN

Vasiṣṭha (XXVIII, 2-4):

"A wife, tainted by sin, whether quarrelsome or a voluntary run-away, or the victim of an outrage, or the victim of thieves, is not to be cast away (*nāsti tyāgo*). Let her courses be awaited for; by them she will become pure again." Atri holds that a woman who has been ravished by *mlecchas* and evil men (*pāpakarmabhiḥ*) is rendered pure again by performing the *prājāpatya* penance and by her courses. (This verse occurs also in *Parās'arasmṛti*, X, 25).

Devala, who probably wrote about the time of the Musulman invasions of Sindh, rules that a woman, who has conceived through one of another *varṇa* (*i.e.*, the abductor) is rendered pure either by miscarriage of the foetus (*viniṣṛte tataḥ salyā, rajaso vāpi dars'ane*) or by giving away the child born of the conception, so that there might be (after her restoration) no mixture of castes (*varṇasaṃkaraḥ.*) (*Devalasmṛti*, in *Smṛitīnam-samuccayah*, Ānandās'rama ed. p. 87, vv. 47-52). This is in harmony with the principle enunciated by Yājñavalkya (I, 72) that 'in adultery, purification accrues from the recurrence of the courses, but not if there has been conception, and that in the latter case, the wife should be put away.' Vijñanes'vara shows the spirit of reaction against the lenient treatment of the woman, by explaining away the older rules

in her. favour as referring to 'mental adultery' (*manovyabhicāra*), and that where the father of the unborn child is a S'ūdra the woman *must* be cast away, in accordance with a rule of *Manu* (IX, 155). But, he shows some consideration to the unfortunate woman by laying down that by "casting away" (*tyāga*) all that is meant is that she should not be allowed to take part in the religious rites of the husband, as a chaste wife will be entitled to do, and that it is not intended that she should be driven out of the house, in which she may remain in confinement. (*Tyagas'ca upa-bhoga-dharma-kāryayoḥ; na tu niṣkāsanam gṛhāt tasyāḥ, 'nirundhyāt eka ves'mani' iti niyamāt*).

The same stand is taken by Aparārka.: '*etacca mānasa vyabhicare*, p. 98; ' *sambhoga-samspars'a-sambhāṣaṇa-sahādhikāra-viṣayas-tyāgaḥ kāryaḥ, na tu punar gṛhān-nirvasanānurūpaḥ*, p. 99.

The opinion of *Caturvims'atimatam* is thus given in Nandapaṇḍita's commentary on *Parās'arasmṛti*, X, 27:

> *S'ūdra-garbhe bhavet-tyāgaḥ caṇḍālo jāyate yataḥ* ।
> *Garbhasrāve dhātudoṣaiḥ caret-cāndrāyaṇatrayam* ॥

and

> *Catasra eva santyājyāḥ patane satyapi striyāḥ* ।
> *S'vapākopahatā yā tu bhartṛghnī pitṛ-putra-gā* ॥
> (ed. Benares, pp. 311-2.)

157

54, *l.* 8. Al-Biruni on Hindu Treatment of Fallen Women and Returned Converts

The remarks of Al-Biruni, who is anterior to the great *smārtas* of the twelfth century, relate to both the treatment of adulteresses and the Hindu, who having been enslaved by the Muhammadan conqueror, comes back to his country. He says (ed. Sachau, 1910, II, pp. 162-163):

" An adulteress is driven out of the house of the husband and banished.

I have repeatedly been told that when Hindu slaves (in Muslim countries) escape and return to their country and religion, the Hindus order that they should fast by way of expiation, then they bury them in dung, stale, and milk of cows for a number of days, till they get into a state of fermentation. Then they drag them out of the dirt, and give them similar dirt to eat; and more of the like.

I have asked the Brahmins if this is true, but they deny it, and maintain that there is no expiation possible for such an individual, and that he is never allowed to return to those conditions of life in which he was before he was carried off as a prisoner. And how should that be possible? If a Brahman eats in the house of a Śūdra for sundry days, he is expelled from his caste and can never regain it."

The remarks of Al-Biruni show that the rules had hardened by his time, and that Aparārka and Vijñāneśvara in explaining away the old considerate rules were only justifying current usage.

158

54, *ll.* 8-12. REHABILITATION OF THE CONVERTED HINDU

The *locus classicus* among *smṛtis* on the readmission of the *patita* (out-caste) is *Devalasmṛti*, which is devoted entirely to the enunciation of means of restoring by suitable penances such persons to their old place in Hindu society. It consists of about ninety *verses*. But the Devala who is quoted by the great commentators seems to have been another, or atleast, his work seems to have been mainly in *prose*. (Kane, *op. cit.*, p. 121). That his rules, if they had been known in Al-Biruni's age were not operative in Hindu society is evident from Al-Biruni, (*supra*, Note 212.) In the fragment, which now passes as his, he states that the expiations prescribed by him alone are valid, and that the rules of other sages are invalid, if against him (verse 72).

The gist of his doctrine is that a person who had been carried away by *mlecchas*, and had contracted impurity by close association with them, in eating, living and even marriage, (which lead to loss

of caste), can be restored to his old status by a bath in the Ganges and the performance of specified expiatory rites (*prāyasc-citta*). Such restoration can take place even if the person had been away for twenty years :

Gṛhīto yo balāt mlecchaiḥ pañca-ṣaṭ-sapta va samāḥ ।
Das'ādi vims'atim yāvat tasya s'uddhir vidhīyate ॥

The *Mitākṣarā* has ruled that even if a person had been treated as civilly dead by the breaking of a pot, he can be taken back :

Caritavrata āyāte ninayerur-navam ghaṭam ।
Jugupseran na cāpyenam samvaseyusca sarvas'aḥ ॥
(Cited in *Dharma-pradīpa*, p. 209).

The following verses of *Yamasmṛti* (V, 6-7) rule that persons who had been forced into slavery by *mlecchas* can be taken back after performing suitable *prāyascitta* :

Balāt dāsīkrtā yeca mleccha-cāṇḍāla-dasyubhiḥ ।
As'ubham kāritāḥ karma gavādi-prāni-himsanam ।
Prāyascchittam ca dātavyam tāratamyena vā dvijaiḥ ॥

159

54, *ll.* 13-26. TREATMENT OF VRĀTYA. S'IVĀJI'S EXPIATION AND CORONATION

The orthodox definition of a *vrātya* is given in almost identical terms by Manu (II, 39-40) and Yājñavalkya, (I, 37-38). The maximum limit for the performance of *upanayana* for *dvijas* (twice-born castes) is 16, 22 and 24 respectively for the Brāhmaṇa, Kṣatriya, and Vais'ya respectively ; those who have not undergone such initiation in the *Sāvitrī-mantra* and their descendants are *vrātyas* unless they are redeemed by the performance of the rite of *vrātyastoma*. The expiatory rites laid down for them by later writers include the *Uddālaka-vrata*, and the concluding bath (*avabhṛta-snāna*) of the *As'vamedha* (horse) sacrifice (V. N. Mandlik's Trn. of *Yājñavalkyasmṛti*, 1880, p. 165, note 4). Manu proscribes even clandestine relations of *dvijas* with *vrātya* women.

(VIII, 373). Neglect of *sāvitrī* will create new *vrātyas* (X, 21). Sacrificing for *vrātyas* is forbidden (XI, 198).

See Nāgoji Bhaṭṭa's *Vrātya-prāyascittanirṇaya* and the Amber Mahārāja Jai Singh's *Vrātya-prāyascitta-samgraha* (Benares, 1927) for the attitude towards the rehabilitation of those who had become *vrātyas* among ruling dynasties in the Mughal period.

160

VRĀTYASTOMA

See Nagendranāth Ghose, *Indo-Aryan Literature and Cultural Origins* (1934) for a new view of the *Vrātyas* as a highly cultured non-Aryan people of the North East India, responsible for early Upaniṣad thought and the origin of Buddhism. They are held to have followed an exotic cult and 'become Aryanised, and Brahmanised' (D. R. Bhandarkar, *Some Aspects of Ancient Indian Culture*, 1940, follows the line of thought developed by Mr. N. N. Ghosh). Mr. Ghosh points out that there were four kinds of *Vrātya-stoma* (pp. 8-10) which may be classified as those of conversion, excommunication, and purification. The *As'vamedha* is regarded by Mr. Ghosh as a *vrātya* institution, which was superseded by the Brahmanical *Rājasūya* (pp. 128*n*, and 202*n*). Vasiṣṭha (XI, 76-79) lays down in regard to the reclamation of the *vrātya* that he might undergo *one* of the following: the *Uddālaka* penance, a kind of *cāndrāyaṇa*, the *As'vamedha*, or the *Vrātya-stoma.* Unless the ceremonies are done, the *vrātyas* according to Vasiṣṭha (XI, should not have *upanayana*, Vedic instruction or sacrifice or intermarry with those who are still in caste. The question became important when Hindu Kings who claimed *kṣatriya* lineage, like S'ivāji, found that they were *vrātyas*, through omission of the *upanayana*, ceremony, which S'ivāji underwent prior to his coronation, on the advice of Gāgābhaṭṭa (Vis'ves'vara Bhaṭṭa of Benares, the nephew of the famous Kamalākara Bhaṭṭa) who received a fee of a lakh of *hons* for officiating at S'ivāji's coronation (A.D. 1674). The official account of the coronation shows that the great Marātha ruler was made to follow

strictly all the old rules laid for a Kṣatriya king's installation, after undergoing *s'uddhi.*

The fullest account of S'ivāji's coronation is that in Malhar Rāmarāo Ciṭnis, *S'iva-cchatrapatice-caritra*, ed. K. N. Sane, 1924, It is an almost contemporary document, and is based on reports of eye-witnesses and court officials. When S'ivāji decided on being crowned, precedents for the long discontinued coronation rites were diligently sought. Jai Singh of Jaipur had been crowned and had performed a *jyotiṣṭhoma* in Ujjain, and also a *pauṇḍarīka yajña.* He was known to S'ivāji, having brought him before the emperor, on a safe conduct, which was repudiated. Under the orders of Jai Singh an extensive digest of *Dharmas'āstra* was compiled by Ratnākara in A. D. 1713 and named *Jayasimha-kalpadruma* (printed, 1925; *vide* Kane, *History*, p. 548). The procedure followed by the Rājput ruler was studied. But, it was deemed necessary to get a first-rate *smārta* from Benares, and Gāga Bhaṭṭa whose family originally belonged to Mahārāṣtra, was invited. As laid down in the *s'āstras*, a *saptānga* was appointed under the name of *aṣṭa-pradhān* so as to officiate at the ceremony. S'ivāji took an oath (*pratijñā*) at the coronation: to restore the world which had been overrun by the Muhammadans (*Yavanākrānta*) and re-establish the Hindu *dharma* and to govern in accordance with the *Dharmas'āstras* (*ib.* para 274), as befits a descendant of the ancient Sesodia line (*sisodiyā-kulānta utpanna ho-ūna kulabhūṣaṇa hotsāta kuladharma-sthāpanā keli*). That his vow was kept is shown by his ordering the arrest of Sambhāji, for outraging a woman, contrary to *Dharma* (*ib.* para, 282)

161

54, *ll.* 25-29. AS'VAMEDHA BY KINGS OF DUBIOUS KṢATRIYA LINEAGE

After the epic times, the first instance of the performance of the horse-sacrifice (*as'vamedha*) is that of Puṣyamitra S'unga, who performed it *twice* in his reign (185-150 B.C.). Kharavela, the Jain king of Kalinga, performed the *Rājasūya* which has been regarded as even more significant than the *As'vamedha*, in 177 B.C. (R. D. Banerji,

History of Orissa, I, p. 91) S'rī S'ātakarṇi, the S'ātavāhana king, contemporary with Puṣyamitra and Kharavela, performed also the *As'vamedha* twice, like his enemy, the great S'unga, whom he defeated in battle. Gautamīputra S'ātakarni claims to be 'the unique Brāhmaṇa' and the destroyer of the pride of the Kṣatriyas. (Banerji *op. cit.*, p. 118.) In the year 24 of the Kuṣān era a stone post of the horse-sacrifice (*as'vamedha*) was dedicated at Mathurā. "On this stone post Vāsiska is mentioned as the reigning emperor." (R. D. Banerji, *History of Ancient India*, p. 129). In the Nānāghāt inscription the widowed queen Nayanikā, the consort of S'ātakarṇi I, mentioned above, claims to have performed (participated in?) many sacrifices such as the *Rājasūya* and *As'vamedha* (*Archaelogical Survey of Western India*, V, p. 82). In the Gupta dynasty, Samudragupta, Kumaragupta I, and the later Gupta, Ādityasena (c. A.D. 650, V. A. Smith, *Early History of India*, ed. 1924, p. 332) claim to have performed the *As'vamedha*. The Bhāras'ivas are supposed to have performed at Benares '*ten* horse sacrifices'. The Vākātaka King Pravasasena did a horse sacrifice (R.D. Banerji, *Anct. Hist. of Ind.*, p. 1877). In the Dakhan, Pulakes'in I (c. 550) (Fleet, in Bombay Gazetteer, I, i, p. 181) performed it. Towards the end of the seventh century, Madhyamarāja Yasobhīta of the S'ailodbhava dynasty (the name is significant of the origin of the family) of Orissa claims to have done an *As'vamedha* and a *Vājapeya*.

In South India, the early Pallava king Sivaskaṇḍavarman (according to the Hirahadgalli plates, *Epig. Ind.* VI, p. 88) claims to have performed the *Agniṣtoma*, *Vājapeya* and *As'vamedha* sacrifices. The reference in the Udayendiram plates to an *As'vamedha* by an unmentioned king in late Pallava times is noteworthy. (Gopalan, *Pallavas*, p. 125). The Kadamba king Mayūravarma (who, like Puṣyamitra was a Brāhmaṇa) claims to have done an *As'vamedha*. In the Coḷa records, there is reference to only one *As'vamedha* and that in Rājadhirāja's time (Nilakanṭba S'āstri's *Coḷas*, II, p. 220) Kṛṣṇa Yādava, the grandfarther of Mahādeva, the patron of Hemādri, claims to have revived Vedic sacrifices.

162

56, *ll.* 5-6. NIBANDHAS ON DHARMAS'ĀSTRA BY KINGS

The great *bhāṣyas* are virtually *nibandhas*, as they collect in the course of their comments on their originals all the relevant authorities supporting the text, or apparently going against it. Aparārka's *bhāṣya* on Yājñavalkya and Mādhava's commentary on Parās'ara are practically *nibandhas*. Ballāla Sena (A.D. c. 1168) composed, through or with the help of his *guru* Aniruddha, four digests named *sāgara*, *viz.*, *Ācārasāgara*, *Pratiṣṭhāsāgara*, *Dānasāgara*, and *Adbutasāgara*. The last two have been printed. (Kane, *op. cit.*, pp. 340-341).

Pratāparudradeva of Orissa, who ruled at Kaṭaka (Cuttack) from A.D. 1497-1532, is the reputed author of the digest *Sarasvatīvilāsa*, of which the *Vyavahāra* part has been published (Mysore, 1927).

163

56, *l.* 5. HEMĀDRI'S CATURVARGACINTĀMAṆI

" Hemādri and Mādhava are the Castor and Pollux in the galaxy of *dākṣiṇātya* writers on *Dharmas'āstra* " says Mr. Kane (*op. cit.*, p. 354). He held the post of *Karaṇādhis'vara* (Keeper of Records) of Mahādeva, the Yādava king of Devagiri (Daulatabad) in the Dakhan. His modest title disguises, as in the case of the famous Nāna Faḍnavis, the position of virtual premier. His *Caturvargacintāmaṇi* aimed at being an encyclopaedia of *Dharma*, and was designed to consist of five major sections, *viz. vrata, dāna, tīrtha, mokṣa* and *paris'eṣa*. The sections on *tīrtha* and *mokṣā* have yet to come to light. (Kane, p. 354). King Mahādeva under whose command Hemādri wrote his digest, reigned from A.D. 1260 to 1270.

164

56, *ll.* JAYASIMHAKALPADRUMA

See Note 217 on S'Ivāji's coronation, *ante* pp. 281-285. This extensive work is in 19 *stabakas* on *kāla*, *vrata*, *s'rāddha*, etc. Composed about A.D. 1710 (*vide*, Kane, p. 548).

165

56, *ll.* 17-18. SMALL CONTENT OF POLITICS AND LAW IN NIBANDHAS WRITTEN BY COMMAND

There is nothing on polity in Hemādri's digest, and it makes only occasional excursions into the domain of *vyavahāra e.g.*, on sources of ownership (III, i, p. 525 ff.), *strīdhana*, (III, i, pp. 530-531). These are his only digressions into law proper. In the bigger *nibandhas*, *vyavahāra* and *rājadharma* were only part of the bigger scheme. Two parts only are devoted to these in Nīlakaṇṭha's digest out of the twelve, and two out of fourteen in Lakṣmīdhara's *Kṛtya-kalpataru*. In Caṇḍes'vara's *Ratnākara*, the treatment of *Rājanīti* was an after-thought, and *vyavāhara* and *vivāda* (law and procedure) were two sections in seven. In *Smṛticandrika*, *vyavahāra* was one of its *six* divisions, though now its best known ; the others dealt with *samskāra*, *āhnika*, *s'rāddha*, *asauca*, and *prāyscitta*. The *Madanaratna-pradīpa* had no section on *Rājanīti* and its *vyavahāra* section was only one of seven. Other instances can be cited.

166

56, *ll.* 19-21. THE CHARACTER OF RĀJANĪTI IN NIBANDHA LITERATURE

The only works on *Rājadharma* or *Rājanīti* now extant, which form part of a *nibandha* are (1) Lakṣmıdhara's *Rājadharma-kalpataru*, c. A.D. 1110, (2) Caṇḍes'vara's *Rājanītiratnākara*, c. A.D. 1370, (3) *Rājanītiprakās'a* of Mitramis'ra, c. 1620, (4) *Nītimayūkha* of Bhaṭṭa Nīlakaṇṭha, c. 1635 and (5) *Rājadharma kaustubha* of Anantadeva, c. 1675. Among the parts on *Rājadharma* in old digests which are lost must be mentioned king Bhoja's *Rājanīti* (A.D. 1000-1050, mentioned by Kane, *op. cit.*, p. 719) and *Rājadharma-kāmadhenu* of Gopāla a contemporary of Lakṣmīdharma as mentioned by the latter (Kane, p. 612 ; cited by Caṇḍes'vara on pp. 2 and 4 of his *Rājanītiratnākara*, ed. Jayaswal, 1936).

167

56, *l.* 23. KAUṬILYA'S ARTHAS'ĀSTRA

A vast literature has grown round the *Kauṭilīya*. For a discussion of the authenticity, character and place of the *Kauṭilīya* in political thought see my *Ancient Indian Polity*, 2nd edition, 1935, and my *Ancient Indian Economic Thought*, 1934 *passim*.

168

56, *l.* 25. BHOJA'S YUKTIKALPATARU

This has been edited by Pandit Īs'varacandra S'āstri, Calcutta, 1917. The topics it deals with are, besides polity, selection of sites for buildings and construction of buildings, furniture-making, precious stones, ornaments, weapons, draught and other animals, vehicles and the building of ships etc. Bhoja has written on *Vāstus'āstra* in his *Samarānganṇsūtra* (ed. Gaṇapati S'āstri, G. O. S.). The miscellaneous character of the topics in the work, and the citation of Bhoja himself by name six times may justify the suspicion that it has been fathered on the famous king of Dhāra. The polity part is of poor quality.

169

56, *l.* 25. MĀNASOLLĀSA OF SOMES'VARA CĀLUKYA

The *Mānasollāsa* is an encyclopaedic work in 100 chapters, divided into five *vims'atis*, and comprising about 8000 s'lokas in anuṣṭubh metre. It gives a condensed account of many topics. The first two *vims'atis*, which have been printed both at Mysore and Baroda, deal with politics chiefly, dealt with in a very free spirit, so as to bring in medical treatment, horses, elephants, precious stones and alchemy. There is little originality. An account of *tīrthas* (places of pilgrimage) comes early in the work, on the ground that *tīrthasnāna* is imperative for a king, and the holy rivers of the Dakhan within the author's dominions are specifically mentioned. The author is Somes'vara, the son

and successor of Vikramāditya VI. His reign extended from A.D. 1127 to 1138, its shortness being due to the great age to which Vikramāditya lived. It was composed in A.D. 1131 (Mr. G. K. Shrigondekar's introduction to the Baroda edn. p. vi).

170

56, *ll.* 29-30. KĀMANDAKA, SOMADEVA-SŪRI AND HEMACANDRA

All the three writers make a display of their learning and literary skill, literary effect being more their obvious aim than originality in idea or in presentation of political views. The *Nītisāra* of Kāmandaka is an obvious imitation of Kauṭilya's work but its administrative, legal and economic material is rejected, and attention is concentrated on such minor matters of king-craft as the *maṇḍalas* and diplomacy. The treatment betrays unfamiliarity with actual government. Somadeva-Sūri was a Jain teacher (c. A.D. 950). His work is in simple, readable prose of great elegance. It is chiefly a rehash of some portions of Kauṭilya's work, whose phrases are woven into the texture of Somadeva's own sentences. It has been printed at Bombay with a baffling commentary, which contains many forged texts.

For analysis of the contents of the *Nītisāra* and the *Nītivākyāmṛta*, see—Benoy Kumar Sarkar's *Introduction to Hindu Positivism*, 1937, pp. 381 ff., and pp. 420 ff.

Hemacandra is another Jain writer, and a polyhistor. He lived between A.D. 1089 and 1173 under the patronage of his disciple Kumārapāla Cālukya, (A.D. 1143-1172) king of Anhilvād His *Laghu-arhan-nīti* was printed in 1906. For an analysis of its contents see Sarkar, *op. cit.*, p. 430.

See note 28 *supra*.

171

57, *ll.* 1-4. RĀJADHARMA WORKS BY COURT PAṆḌITS.

Nilakaṇṭha wrote under the patronage of Bhagavanta Singh of Bhareha, near the junction of the Jumna and the Cambal (Carmaṇvatī). Bhagavanta was a Bundela chief of the Sengara clan. The

digest was named after the patron as *Bhagavanta-bhāskara*. As the work was named Bhāskara 'the Sun,' each section was called a ray of the Sun (*Mayūkha*). The division into twelve sections was perhaps suggested by the number of Ādityas being twelve, (see P. V. Kane's ed. of the *Vyavahāra-mayūkha*, 1926, Introduction, p. xvii).

Mitramis'ra, the author of *Vīramitrodaya*, was an *ās'rita* of the famous Bīr Singh of Orccha, who ruled from 1605-1627, and was coeval with his patron Jahāngir, for whose sake he assassinated Abul Fazl, in 1602 (Vincent Smith, *Akbar*, 1917, p. 305). Jahāngir promoted Bīr Singh when he came to the throne and showed him so much consideration that Bīr Singh was promoted to a *mansab* of 3000 (see my ed. of F. Gladwin's *History of Jahāngir*, 1930, p. 23). He was also permitted to fortify Datia and Orccha, rebuild the famous temple of Kṛṣṇa at Mathura, and build many other temples. His revivalist zeal for Hinduism is responsible for the patronage of Mitramis'ra whose digest combines in its title his own name coupled as 'friend' with that of his patron.

Anantadeva the author of *Rājadharmakaustubha* wrote under the patronage of Baz Bahadur of Almora (1662-1675). *See* Kane's *History of Dharmas'āstra*, pp. 452-453.

172

57, *ll.* 11-31. Lakṣmīdhara and the Kṛtyakalpataru

The relevant information on Lakṣmīdhara and his great digest and a consideration of its place in the history of *Dharmas'āstra* is collected in my articles on Lakṣmīdhara on pp. 148-168 and 199-223 of the *Madras Law Journal Commemoration Volume*, 1941. The question of the alleged citation of Vijñānes'vara by Lakṣmīdhara, to which currency has been given by the high authority of Mr. Kane, who brought it into notice (*History of Dharmas'āstra*, pp. 289, 317), is examined and it is shown that the position can not be sustained. The dates of the composition of the *Mitākṣarā* and the *Kalpataru* are determined as c. 1120 and 1110 respectively, in

modification of the dates given by Mr. Kane, who places the *Kalpataru* long after the *Mitākṣarā*. Incidentally, from the *Kalpataru* confirmatory evidence of the author of the *Kāmadhenu* being Gopāla, as suggested by Mr. Kane (pp. 294-296), is given, and he is shown to have been a contemporary and friend (*vayasyaḥ*) of Lakṣmīdhara.

173

58, *ll.* 1-6. CAṆḌES'VARA

Mr. Kane in his *History* (pp. 370-372) and Dr. Jayaswal in his introduction to the *Rājanītiratnākara* (pp. 12-22) have given the available information about the personal and family history of Caṇḍes'vara, who, while liberally "borrowing" from his predecessors, particularly Lakṣmīdhara, to whom he is inferior in ability and erudition, claims superiority over them :

Yasmin-na kiñcidapi s'aṃsati Kamadhenur-
Yatreṣṭamalpamapi Kalpatarurna datte ।
Dhatte na gandhamapi kañcana Pārijātaḥ
Tat-sarvamapi vivinakti nayapravīṇaḥ ॥

(Caṇḍes'vara's preface, sl. 25 to *Kṛtyaratnākara*, Bib. Ind., 1925, p. 6).

174

58, *ll.* 16-32. NĪTIMAYŪKHA

The paramount authority which his *Vyavahāramayūkha* has attained through judicial decisions in the Bombay Presidency has invested all the other sections of the *Bhagavanta-bhāskara* with a reputation, which is somewhat unmerited. This is particularly the case with his *Nītimayūkha*. It is a pedantic work. Its main reliance is on Varāhamihira's *Bṛhatsamhitā* and the *Nītisāra* of Kāmandaka. Like other writers after the Musulman conquest, he recommends *kūṭa-yuddha* and the use of poisoned weapons, destruction of the civil population etc. To show his want of realism, Mr. B. K.

Sarkar has pointed out that Nīlakaṇṭha's authorities are of the Gupta period (*op. cit.*, p. 547).

175

59, *line* 1. NON-KṢATRIYA CORONATION

At the beginning of the *Nitimayūkha*, Nilakaṇṭha declares that the term Rājā is valid (*sakto*) only in regard to the Kṣatriya (*Kṣatriya-mātro*) and is not a result of assumption of a kingship (*Rājya-yoga*). He argues that as kingship (*rājya*) follows coronation, and it is laid down that the *Rājā* should be crowned (*Rājānam abhiṣiñcet*) which can only mean the Kṣatriya. There seems here a tacit assumption that what he says in the book is applicable only to Kṣatriya kings but the tenor shows that he was more of a realist than might appear from this initial argument. He describes the Vedic ceremony of coronation with *vedic* rites, (*abhiṣeka-vidhiḥ*, and *abhiṣeka-prayogaḥ*) which take up nearly two-fifths of the short treatise. It is noteworthy that the more rigid Laksmīdhara, who, though a courtier, unlike Nīlakaṇṭha who was a mere scholar, has omitted the Vedic rites and the full *mantras* from the *Aitareya-brāhmaṇa* in *Rājadharma-Kalpataru*, and given only three pages to the coronation.

176

59, *ll.* KILLING A BRAHMAN IN SELF-DEFENCE

The subject is discussed in pp. 91-100 (Gujarāthi Press ed. 1921). He quotes *Manusmṛti*, VIII, 350-351, that 'one may slay without hesitation an assassin who approaches him with murderous intent, even if he be his own teacher, a minor, an aged man, or a Brāhmaṇa versed in the Veda, and by killing an assassin the slayer incurs no guilt,' and Kātyāyana (a verse not found in Mr. Kane's reconstruction of this jurist) that 'by slaying in battle one who approaches the slayer with murderous intent and attacks him the killer incurs no guilt accruing to the slayer of a Brahmana,' Nilakaṇṭha argues that the rules refer only to one who actually

attacks and should not apply to a possible slayer who is asleep (*ato jighāmsata eva viprasya maraṇam, na suptādeḥ*) and that the use of the words "or" (*vā*) in Manu's dictum and 'even' (*api*) in Kātyāyana's, shows that the killing of a Brāhmaṇa in such circumstances is not acceptable. Vijñāneśvara, in commenting on Yājñavalkya (II, 21,) by way of illustration discusses this injunction of Manu. The argument is that the words used do not constitute a *vidhi* (command) to the effect that a *guru* and others must be killed, but imply that if even the slaying of a *guru*, who is entitled to reverence and filial affection, an old man and a child, who are objects of compassion are liable to be slain, in in such circumstances, how about others not possessing such claims to consideration—even if they approach as assassins (*ātatāyinaḥ*)? The argument of the *Mitākṣara*, which Nīlakaṇṭha accepts, is further that there would be a conflict between precepts if the meaning is that such *ātatāyins* (a guru etc.) *should* be killed; for Sumantu has ruled that though an assassin (*ātatāyin*) can be killed, without guilt accruing to the slayer, it is otherwise with the killing of a Brāhmaṇa or a cow. There is also the injunction of Manu (IV, 162) that the teacher who initiates one, the teacher who has explained to him the Vedas, or any other teacher, and parents should *never* be troubled (*na himsyāt*), as they are all inoffensive (*tapasvi*) persons. There will be also transgression of the Vedic injunction that one should not injure any living being (*Na himsyāt sarvāṇi bhūtāni*) which is a general interdict against all killing. The significance of the mention of the *guru* and others in the verses of Manu is that they alone should not be killed. It is concluded by Vijñāneśvara, who is following Medhātithi here, that the rule of Manu about *ātatāyins* will apply only to those who are not Brāhmaṇas.

Aparārka holds that a Brāhmaṇa *ātatāyin* may be slain only when he is about to kill another, or is attempting to kill another; *i.e.*, he can be slain when caught in the very act of murdering another. If he escapes, he can not be killed later. He also holds that if it is possible to prevent the murder short of killing the

murderer (*ātatāyin*) to kill the latter will result in the guilt of *brahmahatyā* (Brahman-slaughter). His opinion applies to *ātatāyins* of all castes. Medhātithi was of opinion that a murderer could be killed even after the commission of the crime, provided he is not a Brāhmaṇa, etc. Vijñānesvara held that a Brāhmaṇa or Guru *ātatāyin* should be punished short of death, by suitable penances etc.

The *Smṛticandrikā* (*Vyavahāra*) dealing with the question applies the extension given, by parity of guilt, to the term *ātatāyin* by the *smṛtis* (*e.g.*, *Vasiṣṭha*, III, 16 who lays down that the following six are also *ātatāyins*: an incendiary, a poisoner, an armed attacker, a robber of wealth, a man who ravishes another man's wife, and he who takes away a man's field; or Bhṛgu, who adds to the above list the man who curses, who uses incantations, who is an informer, and one who always picks up the weak points of others.) The conclusions of the *Smṛticandrikā* are threefold:

1. All *ātatāyins*, including a Brāhmaṇa *ātatāyin* may be killed when they attempt assassination.

2. With the exception of the Brāhmaṇa, constructive *ātatāyins* like those who rob one of his field, or ravish another's wife, etc. may also be killed.

3. The Brāhmaṇa is not to be killed for the constructive offence of *ātatāyin*, as explained by Bhṛgu and Vasiṣṭha.

In his *Nītimayūkha* Nilakaṇṭha accepted all the three propositions, going thereby against the total exemption of the Brāhmaṇa by Vijñānesvara and Medhātithi. But, in his *Vyavahāramayūkha*, he went back on this total acceptance of the three rules laid down by *Smṛticandrikā*, and argued that in no circumstances should the Brāhmaṇa be killed, as the rules in Manu etc., referred to other ages than Kaliyuga. His conclusion is that 'in the Kaliyuga a Brāhmaṇa *ātatāyin* is not to be killed (even in self-defence), but in other ages this was allowed.' (See Kane's notes to his edn. of *Vyavahāramayūkha*, 1926, pp. 417-422; and his Trn. of the same work, 1933, pp. 262-263, and particularly the notes.)

177

59, *ll.* 4-9. KŪṬA-YUDDHA

Kūṭa-yuddha is described by Nīlakaṇṭha (*Nītimayūkha*, p. 98) as slaying by the use of poisoned weapons and so forth. He cites the recommendation of Kāmandaka to carry on *kūṭa-yuddha* as an alternative (*paryāya*) or addition to open warfare. But the instances of 'unfair' attacks, which he gives may be unchivalrous, but are milder than those in use today among the nations of the West.

178

59, *ll.* 8-26. ANANTADEVA'S DOCTRINES

See Dr. B. Bhattacarya's Introduction to the *Rāja-dharma-Kaustubha*, *passim* and especially,

p. xiv, chief queen and her accomplishments;

p. xiv, "If the king has several queens, then the eldest son, although born of a younger queen, inherits to the exclusion of other sons by older queens." Thus, primogeniture is laid down.

pp. xiv and xv, constitution of the ministry.

pp. xv-xviii coronation ceremony.

179

60-61, *ll.* 1-7. MITRAMIS'RA'S VIEWS

His view on the question of the **qualification of the king** is stated in *Rājanītiprakās'a* (pp. 10-11) in the following words:

Rājas'abdārthaḥ tāvad vicāryate. Kim ayam rājas'abdo Yasmin kasmims'cit prajā-pālake vartate, uta kṣatriya-jātau, kim vā abhiṣikta-kṣatriyajātau varttata iti? Tatra aveṣṭyadhikaraṇe "Rājā Rājasūyena svārājya-kāmo yajeta" ityatra pūrvapakṣe likhitam—

Rājyasyakartā rājeti sarvalokeṣu gīyate |
Mahāviṣayatā caivam s'āstrasyāpi bhaviṣyati ||

Tasmād brāhmaṇādayo rājyam kurvāṇā rājāna iti.

Rājyam tu janapada-paripālanaṁ. Lokaprayoga eva s'abdārthāvadhāraṇe pramāṇam. Loke ca brāhmanādiṣu rājya-kartṛṣu rājas'abdo vartate.

Yāskopi, 'Rāja rājate' iti bruvan, yaugikam rājas'abadam, īs'vara-vacanameva abhyupaiti. Rājānotkarṣas'ca prajā-paripālanā-direva.

Vedepi. "Somo asmākam brāhmaṇānām rājā," "Yo rāja varṣaṇīnām," "Somo vai rājā gandharveṣu" ityādau api, īs'vara-vacana eva pratīyate.

Kos'e api, "Rāja tu praṇatās'eṣa-sāmantas-syāt"

On **primogeniture** his views are given in pp. 35-38. He cites Manu in favor of the heritage going to the eldest son, and the express injunction of the *Kālikāpuraṇa* :

Athoparicaram rājā yauvarājye abhyaṣecayet ǀ
Jyāyāmsam aurasam putram sarvarājaguṇairyutam ǁ

and the address of Das'aratha to Rāma in the *Rāmāyaṇa :*

Ādiṣṭo hyasi me jyeṣṭaḥ prasūtaḥ sadṛs'o guṇaiḥ ǀ

....

Tasmāt tvam puṣyayogena yauvarājayam avāpsyasi ǁ

He lays down that a regal heritage should not be divided like a private estate : *putrebhyo rājyam vibhajya na deyam* (p. 39).

The State's liability to make good stolen property is limited. After citing Yājñavalkya's injunction that stolen property should be made good by the king (II, 36), Mitramis'ra adds (p. 127) the comment that what is lost through the theft of the servants of the owner need not be made good. (*Yattu dhanasvāmina eva paricārkair-nītam tattu rājñā na deyam.*)

Mitramis'ra's treatment of the Maṇḍala doctrine. See chapter 30, pp. 320-321.

THE BRĀHMAṆA PERMITTED TO BE A SOLDIER

The following half-verse from the *Mahābhārata* shows that every one is bound to fight for his country, if ordered to

do so by the king, and that the Brāhmaṇa particularly should obey the mandate:

Rājñām niyogāt yoddhavyam brāhmaṇena viśeṣataḥ ।

Duties of a conqueror

The rules from the *smṛtis* are summarised by Mitramiśra on pp. 409-413. The main features of the rules are that the old royal family, which has been defeated, should be restored, that private looting should be forbidden, that all spoils should be brought to the king, who will reward his soldiers as he deems fit, that if the former king is killed, one of the family should be crowned, that the conquered kingdom should not be destroyed (*i.e.*, annexed):

Duṣṭasyāpi narendrasya tad-rāṣṭram na vināśayet (p. 411)

and that the laws and usages of the conquered country should be respected and reinforced. (p. 411). The victor should conciliate the conquered people.

Obviously, these precepts if accepted by the Mughal conquerors would be beneficial to the Hindu population.

180

61, *ll.* 8-12. CAṆḌEŚVARA AND LAKṢMĪDHARA

Caṇḍeśvara is a wholesale borrower of Lakṣmīdhara's *Kṛtya-kalpataru*, and practically every section of his *Ratnākara* series is built on the corresponding section of the *Kalpataru*. I am illustrating it in my edition of the *Kalpataru*. But he has not borrowed from Lakṣmīdhara in the *Rājanīti-ratnākara*. The circumstance that it was composed when he was over eighty will explain its slim size, as compared with the bulkier seven sections of the original *Ratnākara*, and also his omission to make more use of Lakṣmīdhara's work. There are only six citations of Lakṣmīdhara by name (pp. 16, 20, 37, 70, 72, 73) in the *Rājanīti-ratnākara* besides a phrase from *Nītikalpataru i.e.*, *Rājadharma-kalpataru*.

181

61, *ll.* 14-17. KING'S PROPITIATION OF UNSEEN POWERS

Lakṣmīdhara's *Rājadharmakalpataru* contains many directions of a detailed character on the need to propitiate unseen powers and the ways of doing so. As a *śrotriya* he must have believed in their efficacy, and felt a special competence to advise his king on the subject. That the calamities of the Musalman invasions in the eleventh and the twelfth centuries of the Christian era turned the eyes of the orthodox Hindus to such magical rites is illustrated not only by the space given to them in the *Kalpataru* but by the still fuller use made of such spells and ritual in the works of his very much younger contemporary Ballālasena, whose *Dānasāgara* for instance gives the ritual and mantras *in extenso*. It may be noted that Ballālasena wrote a special work on *portents* (*Adbhuta*), *viz. Adbhuta-sāgara*, which was printed in 1905. This work was commenced in A.D. 1068 and was left incomplete by Ballālasena, and completed by Lakṣmaṇasena. All Ballālsena's works were written with the help of his *guru* Aniruddha, the author of *Pitṛdayitā* and *Hāralatā.*

182

61, *l.* 19. CASTE OF CAṆḌEŚVARA'S MASTER. THE BRĀHMAṆA AS KING

The Karnāṭa dynasty of Mithila, which had been ruling there from the last quarter of the eleventh century, when it became independent under Nānyadeva, came to an end in 1324, when Harisimhadeva retired to Simraongarh in Nepal after defeat by Ghiyāz-ud-din Tughlāk (*Ind. Ant.*, 1884, p. 414). Caṇḍeśvara, like his father and grandfather, had been a Minister under this king. Caṇḍeśvara must have succeeded to the ministership by 1310, as in 1314 he performed a *Tulāpuruṣadāna* himself (Intrn. to *Dānaratnākara*, MS. in B.O.R. Institute, Poona). After the withdrawal of Harisimhadeva to Nepal, a new dynasty founded by the Rājaguru or Spiritual Preceptor of the old dynasty established itself in Mithila under the

suzerainty of the emperor of Delhi. The founder of the new kingdom was Kāmes'a or Bhaves'a, who commissioned Caṇḍes'vara to compose the *Rājanīti-ratnākara*. Bhaves'a was a Brāhmaṇa, as a Rājaguru, and Brāhamaṇas are interdicted from being kings. That Puṣyamitra the S'unga king, did so made him a degraded "Ārya" (*Ānārya*) to the Brahmaṇa poet Bāṇa, who condemned the act in the seventh century. (Trn. of *Harṣacarita*, Cowell and Thomas, p. 194).

The King's duty was to fight. A Brāhmaṇa was interdicted from bearing arms, except in very abnormal circumstances. Āpastamba laid down that a Brāhmaṇa should not touch weapons even for mere examination (*Parīkṣārthamapi brāhmaṇa āyudham nādadīta*, 1, 10, 29, 6). Baudhāyana, against the specific prohibition of it by Gautama (to which he refers) allows a Brāhmaṇa to to take up the *vṛtti* of a Kṣatriya if he is not able to maintain himself by teaching, sacrificing and receipt of gifts, but limits it to cases in which society is distressed by the spoliation of Brāhmaṇas and ill-treatment of cows and castes get mixed up (*varṇānām api samkare.*)—(II, ii, 4, 16-18) In the same spirit the *Mahābhārata* (XII, 78, 12-36) allows the Brāhmaṇa to take up arms in defence of the subjects of a kingdom attacked by *dasyus*, on the failure of Kṣatriyas. Manu (VIII, 349-350) in the same spirit allowed the Brāhmaṇa to take up arms in defence of Brāhmaṇas, women and Dharma.

That, on a loose interpretation of the permission to the Brāhmaṇa to live by the pursuit of arms, a large number became atleast candidates for recruitment to the army in the days of Kauṭilya, is inferrable from a discussion of the merits of a Brāhmaṇa as a soldier. (*Arthas'āstra*, p. 343). But there is nowhere any permission to a Brāhmaṇa to become king. The passages in *Manusmṛti* (I, 98-101) exalting the Brāhmaṇa in the social scale have been wrongly interpreted by Dr. Jayaswal as sanction to the Brāhmaṇa to exercise sovereignty. (*Manu and Yājñavalkya*, pp. 102-104). Throughout India's history in the very rare instances of a Brāhmaṇa becoming a king, he has had either to abandon his

varṇa and become a Kṣatriya, as did Mayūra, the first king of the Kadamba dynasty (J. F. Fleet, *Dynasties of the Kanarese Districts*, in *Bombay Gazetter*, I, i, p. 286) or apologise for the act. Orthodox opinion was more outraged by Brāhmaṇa kingship than by Vais'ya or S'ūdra sovereignty.

183

61, *ll.* 21-22. RECOGNITION OF THE KING *de facto*

Caṇḍes'vara (*Rājanītiratnākara*, pp. 2-3) discussing the question of who is king, states that consecration is a consequence and not a cause of kingship (*Prāja-svāmitve rājatve prasiddho rāja prāja-pālanavṛtti-abhiṣekādayaḥ asya kāraṇamātram,*) and accepts the same view as Kullūka that the word Rājā is not restricted to Kṣatriyas (*Manusmṛti-vyākhyā*, VII, 1)—" *Rājas'abdopi nātra kṣatriyaparaḥ.*" In classifying rulers from *Samrāt* to Tributary (*Karadaḥ*) he adopts the view that *all* are entitled to the title *Rājā*, and the Dharma applicable to Rājās would apply to all of them equally : " *Sakala-rājebhyo yaḥ karagrāhī sa Samrāt ; Samrāje karado yaḥ sa Sakaraḥ ; svecchayā karado Akaraḥ. Smṛttādau api Rājattvena prakhyātaḥ. Loke tu, Rājeti Sakaraḥ, Cakravartī, Samrāt, Adhīs'varo, Mahārajā iti prasiddhāḥ, vis'eṣapratipatyuparodhāt. Parantu, trayāṇām api Dharmas-samameve.*" (*Rājanītiratnākara*, p. 4).

184

61, *ll.* 22-26. THE STATE'S OBLIGATIONS TO THE POOR

Rājadhane dīna-anātha-ādi-sakala-prāṇinām ams'itvam ; bahunāyakatvāt rājya-vināsasca iti yuktiḥ iti Gopāla-Lakṣmīdhara-Srikarādayaḥ. (*ibid.*, p. 72).

185

61, *ll.* 27-28. BURKE'S DEFINITION OF SOCIETY

This occurs in the *Reflections on the French Revolution.* " Society is indeed a contract. Subordinate contracts for objects of mere occasional interest may be dissolved at pleasure—but the

State ought not to be considered as nothing better than a partnership in pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked on with other reverence; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership can not be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born. Each contract of each particular state is but a clause in the great primeval contract of eternal society, linking the lower with the higher natures, connecting the visible with the invisible world, according to a fixed compact sanctioned by the inviolable oath which holds all physical and all moral natures in their appointed place. This law is not subject to the will of those who by an obligation above them, and infinitely superior, are bound to submit their will to that law." (cited in J. Mac Cunn, *Political Philosophy of Burke*, 1913, pp. 59-60.) The view of Burke very closely approximates to the Hindu view of the eternal social order, as I have pointed out in previous works of mine.

186

61, *ll.* 30-31. DIVINITY OF THE PEOPLE (PRAJĀḤ)

The idea of the king's divinity is enshrined in the identification of the king with Viṣṇu. The same idea applied to the subject (*Prajā*) invests the latter with divinity and inviolability. Thus, in the *Mahābhārata*, Śāntiparva, 59, 106, it is said in the coronation oath that the people of the country (*bhauma*) are God (*Brahma*) and that in protecting the people the king is serving God:

Pratijñām ca abhirohasva manasā karmaṇā girā ।
'Palayiṣyāmyaham bhaumam Brahma' styeva ca-asakrt ॥

The passage cited by Caṇḍes'vara ends thus:

'Adyārabhya na me rājyam; rāja ayam rakṣatu prajāh' |
Iti sarvam Prajā-Viṣṇum sāksiṇam s'rāvayed-muhuḥ ||

187

62, *l.* 6. COMPOSITION OF THE RĀJANĪTIRATNĀKARA BY ROYAL COMMAND

Caṇḍes'vara states expressly in the second verse of the introduction to the *Rājanītiratnākara* that he composed it by command of King Bhaves'a:

Rajñā Bhaves'ena ājñapto Rājanīti-nibandhakam |
Tanoti Mantriṇām āryaḥ s'rīmān Caṇḍes'varaḥ kritī ||

Dr. K. P. Jayaswal (*Rājanītiratnākara*, Introduction, p. 23) shows that Bhaves'a was otherwise known as Bhavasimha, and that he was the younger brother Kames'a or Kames'vara, of the family of the *Rājaguru* of the Karnāṭa dynasty of Mithila, who was set up as king in place of the old line, by the Delhi emperor, about A.D. 1370. Caṇḍes'vara must then have been eighty-five. "Evidently he enjoyed a long life like his grandfather Devāditya. This record for old age and mental vigour is repeated in his family by Vidyāpati who lived under successive sovereigns of the dynasty of Bhaves'a." (*ib.*, p. 25).

188 (*See* Note 81)

THE PRINCIPLE OF SUBSTITUTION IN MĪMĀMSA (*Pratinidhi*)

The matter is argued in *Jaimini-sūtras*, VI, iii, 13-41. The *pūrvapakṣa* is stated in *sūtra* 13 that in the absence of the prescribed material no other should be used as a substitute. The reply of Jaimini is that the command being general does not interdict the use of the substitute, *i.e.* the command is in regard to the performance of the sacrifice (*Yāga*) and not its material. Sometimes the Veda indicates the substitute. But there can be no substitute for the deity invoked in a sacrifice, the fire, the *mantra*, and the act. (*sūtra* 18) nor should there be a substitute for any material expressly forbidden (*sūtra* 20). In regard to the attainment of the fruit of the

sacrifice (*phala*) there cannot be a substitute for the *yajamāna*. (*sūtras*, 9, 21.) Where a number of persons are engaged in a sacrifice and one of them is missing or incapacitated a substitute can be used (22). But the substitute is only a servant so far as the fruit is concerned (26). When any material is lost or unavailable, anything of the same class can be used (27). It is unreasonable not use a substitute (30). In the Veda it is laid down that if Soma is not available *pūtikā* (a plant resembling Soma) may be used :

Yadisomamavindeta pūtikānabhiṣuṇuyāt ।

If a substitute is lost, it should be replaced by an article resembling not itself but the original (32). If the principal (*mukhya*) becomes available, after the substitute is used, the former should be used, as the substitute is only to act for it, in its absence (35). This may be done even in the middle of a sacrifice (36). Sometimes the substitute may be more efficacious than the prescribed original, and in such a case can the substitute alone should be used, since the object is more important than the article to be used as prescribed ? (39-40). Jaimini replies that it should not. (41).

189

A Woman's Independent Right to Perform a Sacrifice

(*To be read with* Note 130.)

In *Mīmāmsasūtra* (VI, i, 17) it is laid down that the husband and the wife possessed of wealth are entitled to perform the same sacrifice. (*Svavatostu vacanādaikakāmyam syāt*) depending on the Vedic injunction :

Dharme ca arthe ca kāme ca anaticaritavyā ।
Sahadharmaścaritavyaḥ. Sahāpatyam utpādayitavyam ॥

" She should not be discarded in religious affairs, business and desired objects ; all religious acts should be performed together ; children should be brought forth together." (M. L. Sandal's Trn, p. 303).

INDEX

A

PAGE

ABHIṢEKA 35
Abul Fazl 41, 203
Ācāra 16, 23;
practice of good men in accord with vedic injunction 31; 55, 158
Ācārādarśa 129
Ācārasāgara 199
Ācārendu of Nārāyaṇa 88
Adbhutasāgara 199, 211
Adharma 35, 94
Ādityasena 198
Adoption 98
as a fiction in law 111; 170
adṛṣṭa 94
Advaita 49
āgama 156
Ahalyā Bai Holkar 88
Ahalyā-kāmadhenu 88
Ahmadnagar, Sultan of 130
āhnika 200
Aitareya-Brāhmaṇa 59, 170, 205
Ājivakas 12, 177
Ajit Singh 189
ājya 119
Akbar 41, 60, 130, 203
Al-Biruni—on the treatment of women in India 54, 193-194
Alexander 142
Alma mater 1

PAGE

Altekar, Dr. A. S. —on Rāṣṭrakūṭa administration 143;
on upanayana for women 165-6; 169
status of women 171; 173, 180, 184, 187, 188, 189
Altindischen Rechts Schriften 91
Anantadeva 31, 57, 58, 59, 130, 200, 203, 208
Anarchy, Horror of 102
evils of 146
(see Arājatā)
Ancient India (Rapson) 86, 115, 124
Ancient Indian Culture, study of 67
Ancient Indian Economic Thought 68, 78, 107, 171, 201
Ancient Indian Polity, 68, 76, 78, 82, 83, 84, 86, 101, 102, 122, 133
Ancient Law 69, 74, 109, 110, 111, 168
Āndhras 142
Aṅga 160
Aṅgiras 116, 167, 186, 188
Aniruddha 41, 211
Annals of BORI, 1940 126
Annals of Rājasthan 189
Antalcidas (King) 124

PAGE

Antigonus 142
Anvārohaṇa 186
Ānvīkṣikī 12, 148
āpad-dharma 48, 161-162
Aparārka 41, 54, 57, 76
on sources of Vidyā- 95; 129, 152, 188, 191, 193, 194, 198, 206
Āpastamba 16, 24, 50-51, 87, 93, 148, 162
S'loka—Āpastamba 163; 171, 173, 182, 184, 189, 212
apūrva 25
Arājatā 45, 102
(see also Anarchy)
Archæological Survey of Western India, V 198
Aristotle 6
Arjuna 34
(see Kārtavīrya)
artha 29
Arthas'āstra (general) 26, 43, 82
Arthas'āstra 5, 6, 7
as the sixth veda 11
secular character of 12
differences with Dharma-s'āstra 13
no real conflict with Dharmas'āstra 13, 82-83
Mimāmsā rules of interpretation applied 13-14;
unacceptable to the Buddhist because of its s'ruti source 14; 15, 16;
as public law 23, 24
education of a prince in 46, 56;
revived interest in the 64;
striking resemblance with European Cameralism 68; 76, 77, 78, 84
Kauṭilya's own bhāṣya on 87
as planned economy 92
differences with Rājanīti and Dharmas'āstra 92-93;

PAGE

Arthas'āstra
classification of smṛti in 98
schools of Dharmas'āstra recognised by 112; 113, 133, 139, 141, 148, 149, 158 201. 212
Arthas'āstra of Kauṭilya the *locus classicus* of Indian Polity 5; 6, 19, 56
arthavāda 81
Ārya 48
Āryāvarta—limits of 159, 161
Asahāya-bhāṣyas on Manu, Gautama, etc. 18; 40, 87
asavarṇāvivāha 52
As'oka—patronised Ājīvakas 12; 43
granted a respite of three days to offenders who were punished between sentence and execution 44, 77
alleged case of change in Law 135
Prohibition of Vedic sacrifices by 138-9
Rock Edict I 138
Pillar Edict II 138
Pillar Edict IV 136-7, 138
Pillar Edict V 138
Pillar Edict VII 138, 140
Asoka's dharma is Hindu 140
Rock Edict V 140
and Dharmavijaya 140
As'oka (Smith) 137, 140
aspṛs'ya 49
reduction of the rules of 166-7
Ās'ramadharma 26, 39
(see also *Dharma*)
Astrology 26
āsura 50
Asuravijaya 140
As'vaghoṣa 158
Ās'valāyana-gṛhyasūtra 87
As'vamedha 38, 54, 60

PAGE

Asvamedha
performance by kings of dubious caste 122, 197, 198; 123, 166, 195, 196
Atharva-veda
Arthasāstra included under 11; 76, 77, 177, 185, 186
ātatāyin 53, 83, 191, 206, 207
atidesa 118
ātmahatyā 52
ātmanastuṣṭiḥ 47
Atri 53, 192
Aufrecht 5
Autobiography of Max Mueller 88
Aurangazib 41, 130
Authorities—conflict of 96, 99
Āyurveda 26

B

BĀLAMBHAṬṬA Pāyaguṇde 88
Bālambhaṭṭīya 88
Bali 49
Ballālasena 41, 56, 198, 211
Bāṇa 52, 106, 188, 212
Banerjee B. 72
Banerji, Gurudoss 171
Banerji Sastri, Dr. A., 57, 84
Banerji, R. D. 124, 183, 197
Basant Singh 189
Baudhāyana 16, 90, 91, 116, 156, 157, 159, 160, 162, 169, 177, 183, 184, 212
Baudhāyanapariśiṣṭa 170
Bāz Bahadur 203
Besnagar 115
Bhadravarman of Campā 45, 145
Bhadresvara 145
BhagavantaBhāskara 58, 203, 204
Bhāgabhadra—King, Kasiputra 124
BhagavantāSingh of Bhareha 202
Bhāgavata, Sri 164

PAGE

Bhāgavadgītā 115
Bhakti 38;
faith in God in preference to sacrifices recommended 115
Bhaktimārga 49;
the struggle of its adherents with smārtas 168
Bhaktiprakāsa 115
Bhandarkar, D. R., 137, 138, 196
Bhandarkar, R. G. 168
Bhallāvins 160
Bhānu—grandson of Saṅkara bhaṭṭa 130
Bhairavācārya 186
Bhārasivas 14, 39, 122, 123, 198
Bhāsa 187
bhāṣya 18, 19, 20, 22, 84, 87, 199
Bhāṣyakāras 19
Bhattāchārya, B., 208
Bhaṭṭasvāmin commentary on Kauṭilīya 84
Bhaviṣyapurāṇa 97
Bhavanāga 123
Bhavesa 212, 215
Bhoja 41, 56, 129, 200, 201
Bhṛgu 207
Bhūpāla-Kṛtya-Samuccaya 129
Bhūvarāha 125
Bīr Singh, patron of Mitra Misra 60, 203
Bombay Gazetteer 145, 213
Bombay, University of—Its school of Sociology 2, 67
Borradaile-translation of *Vyavahāra-mayūkha* 72
Brahman, Immunities of a 75-76
Brahmapurāṇa 177, 182
Brahmasūtra 18
Breloer 92
Bṛhadratha, the last Maurya ruler 106
Bṛhannāradīyapurāṇa 162, 176, 185

PAGE

Bṛhaspati 6, 20, 40;
accepts usages of caste of *pratiloma* unions 48;
pleading for the inheritance of the childless-widow 51; 83;
on Nyāya 114;
on *dāna* 115; 116, 121, 134, 149
on *yukti* 153-4; 155
on the rights of women 172; 191
Bṛhaspatismṛti 18, 70, 121
Bṛhatparāśara 163
Bṛhatsaṃhitā 85, 204
Brūṇahatti 44, 139
Buddha, the 17, 128
Buddhists, reference in Manu to customs of 12;
abhorrence of 48; 77, 78;
Buddhism, under the Mauryas 37; 51, 122;
Mīmāmsā—effect on 125-7;
influence of Saṅkara on the decline of 127-8;
as influencing ideas of sex-equality 175;
Buehler 155, 157, 171, 173, 178
Burnell A. C., translation of Dāyabhāga of Mādhava's bhāṣya 72
Burke, Edmund 61, 213, 214
Butūga II 145

C

CALCUTTA-University of—
Carmichael professorship 2
Special Readership lectures 5
Tagore Law Professorship 73
Cambodia 49
Cāmpa, Kauṇḍinya emperors of 45, 145
Cāmpā—(R. C. Majumdar) 145

PAGE

Caṇḍeśvara, sections omitted by 29, 96; 41, 57, 61, 62, 108, 129, 200, 204, 210, 211, 212, 213
composed *Rajanīti-ratnākara* by royal command 215
Candragupta-(Maurya) 140, 141, 185
Candragupta II 52, 85, 148, 183
Cāndrāyaṇa 192, 196
Caraṇavyūha 76
Caritra 47, 62, 132, 148
Castor 199
Castrense peculium 50, 168
Caturvargacintāmaṇi 56, 199
Caturāśrama 29
Cāturvarṇa 29
Caturviṃśatimata 40, 54, 193
Catussatītīkā 107
Celibacy, condemnation of prolonged 176, 177
Chāndogya Upaniṣad 77
Chips from a German Workshop 89
Cho Dink rock—inscription 145
Cikitsāprakāsa 95
Cintāmaṇi—of Vācaspati Miśra 130
Citnis Bakhar 60
Citnis, Malhar Rāmarāo 197
Civil Law 16, 20, 23, 40, 50;
Indian law of person and property 50, 56
Codanāliṅgātideśa 118
Code of Gentoo Laws 8, 71, 72
Coḷas 45, 142
their claim to follow Manu's lead 145-6
Colebrooke, H.T., his digest 9;
his study of Mīmāmsā 21; 71, 72, 88 89-90;
Considerations of Hindu Law 72

PAGE

Coronation—release of prisoners at the time of 44
omission of the rite of 46
Corpus Inscriptionum Indicarum III 125
Cowell, H. 73;
and Thomas, F.W. 212
Crooke, W. 189
Cyavana 167
Custom and Law—see *Law*.

D

DAIVAPUTRA 144
Dalapati 130
Damodara 130
Dāna 38, 119, 169
Dānakhaṇḍa 115
Dāna-ratnākara 211
Dānasāgara 199, 211
Daṇḍa divine origin of 13, 102; 34, 80
Daṇḍaniti 93, 102, 103, 134, 148
Daṇḍa-pāruṣya 78
Daṇḍin 44, 45, 135, 136
Das'aratha, grandson of As'oka patronised Ājivakas 12, 77
Das'akumāracarita 135, 186
Das'ās'vamedha-ghat 123
Dattaka-candrikā 72
Dattakamimāmsā 72
Dattātreya 106
Dawn of New India 72
Dāya 70, 71
Dāyabhāga 9, 10, 19, 70, 72, 73
Dāyakramasamgraha of Sri Kṛṣṇa 9, 72
Des'ācāra 133
Devadūṣaka 76
Devagiri 40, 41, 129
(see also Yādavas of Devagiri)
Devala—on reinstatement of fallen women 53, 54;

PAGE

Devala
claim to supersede other smṛtis 128; 169, 170, 173, 192, 194
Devalasmṛti 40, 192, 194
Devaṇṇa Bhaṭṭa 52, 180, 188
Devī-candragupta 183
Devasthali, G.V. 126
Dhamma (Buddhist) 45;
of the Rock and Pillar Edicts 139-140
Dharma-mahāmātya 143
Dhanya Viṣṇu 124, 125
Dharma, Indian literature on 5, 20, 24;
as fixed in action 25;
compared to Law of Nature 25;
divided into *pravṛtti* and *nivṛtti* dharma 26;
Sādhāraṇa and *Asādhāraṇa* 26;
relating to *ās'rama* 26;
guṇa 26;
nimitta 26; 27, 29, 30, 31, 34, 35;
divine character and universal applicability of 35;
in times of stress 36;
as good for all time 37; 39
Hindu dharma under Muhammadan rule 41; 42, 43;
As'okan prohibition of castration 44; 45;
the functions of the state are in the interests of 46; 47, 48;
elasticity of 48-9;
indicated by good conscience 50; 52, 55;
literature 56;
breach of Dharma 61; 62, 64, 79, 80, 82, 83, 92;
mahājana path of 93;

PAGE

Dharma
connotation of 93-4;
classifications of 94;
comprehends all knowledge 94-95;
adjustment to capacity of 109;
absence of the influence of legal fictions in Hindu Dharma 110-111; 132, 133, 138, 140, 156, 157
āpad-dharma 161; 162
relaxation to *yuga-dharma* 163-164; 183, 184, 197
Dharmādhikarī 45
same as Dharmāmātya 143
Dharmakos'a 25
Dharmānkus'a 143
Dharmāmātya 45
same as Dharmādhikāri 143
Dharma-mahārāja—as title among Pallava Kings 143-4
as a Kadamba title 144
Gaṅga 145
in Campā 145
Dharma-pradhāna 143
Dharmapradīpa 162, 164, 166, 167, 176, 177, 181, 184, 185, 195
Dharmarāja-ratha 144
Dharmarājas 45
Dharmaratna of Jīmūtavāhana 70, 73
Dharmas'āstra 5, 6, 7, 8;
vyavahāra content of 9-11, 12, 68;
comparison with Arthas'āstra 13;
Arthas'āstra core of 14, 84;
Rājadharma content of later digests belongs properly to, 15; 17, 20, 21, 23, 24, 26, 27
parts of *Kalpataru* described 27-8

PAGE

Dharmas'āstra
scope and content of 29
the only relevant content of the Veda 30, 32
vastness of D. literature 33, 100-101
causes of its growth without interruption 34
Schools of and progress 36; 37, 41, 44, 45, 56, 60, 62, 64, 65
as priestly twaddle 68
small content of Law and polity in 70, 71;
early English translations of 72-3; 75, 78, 82;
attitude of Indian courts to 89;
digests under patronage and authorship 129;
difference between Artha-s'āstra, Dharma-s'āstra and Rājanīti 92-93;
dharma-sthānas 20
omission of Rājadharma and Vyavahāra in digests 95;
composition of Dharma s'āstras in periods of civil troubles 101
in the Musalman period 129, 130;
artha content of 133; 148;
ekavākyatvam 150-152; 167, 168, 197, 199
Dharma-Saukhya 26
Dharma-sthīya 78
Dharma-sūtra 70
Dharma-sthānas 26
Dharmāvatāra, title of Mārasimha 145
Dharmavijaya 45, 140, 143
Dhruvadevī 183
Dialogues of the Buddha 86
Dilīpa 146

PAGE

Divorce 175-176; (see marriage)
Doctrine of Representation 118-121
Doctrine of Weakness (see *yugadharma*)
Dvaitanirṇaya 42, 130
Dvaita-viveka 130
Dynasties of the Kanarese Districts 145, 213

E

Early History of India 198
Early History of Iustitutions 69, 70, 90
Eggeling 120, 139
Ekavākyatva 47, 112, 150-152
Epics—as fifth and sixth category of the Veda—thrown open to women and s'ūdras 11
Epigraphia Carnatica 144
Epigraphia Indica 143, 182, 189

F

Fictions in Hindu Law Texts 79, 80, 97, 110, 111, 150, 151, 152
Filius familius 168
Firuz Shah Tughlak 130
Fleet, J.F., 122, 125, 139, 145, 187, 198, 213
Formichi 85
Freedom—based on the discharge of the state—duty of protection 45

G

GADĀDHARA 118
Gāgā Bhaṭṭa as chief priest in the coronation of S'ivāji 60; 130, 196 (see Vis'ves'vara Bhaṭṭa)

PAGE

Gāharwars of Kanauj 40
Gains of Learning Act 168
Gaṇapati S'āstri, T. Mahāmahopadhyāya—edition of *Arthas'āstra* 19
edn. of Kāmandaka's *Nītisāra* 84; 86, 87, 201
Gāndharva 50
Gaṅgas 39, 45, 144
Gaṅgas of Talkad 145
Gāṅgeyadeva 53, 189
Gauḍas 112
Gautama—*dharma-sūtra* of 16;
Asahāya on 18; 87, 92, 114, 120, 149, 156, 162, 171, 182, 183, 184, 212
Gautamiputra S'atakarṇi 198
Gentoo Code of Halhed 71
Gharpure, J.R. 96, 117
Ghiyaz-ud-din-Tughlak 211
Ghosh, Nagendra Nath 196
Ghosal, Dr. U.N. 107
Golden Age reproduced by a good king 34 (see *Rāmarājya*)
Goldstücker 72
Gopāla 41, 129, 200, 204, 213 (see *Kamadhenu*)
Gopalan, R. 143, 198
Govinda Das, Babu 88
Govindacandra of Kanauj 58, 63
Govindasvāmin on *Baudhāyana-dharma-sūtra* 86, 87
govrata 192
Great Epic of India 186
Gṛhasthās'rama (see marriage)
Gṛhya-sūtras 68, 177
Griffin 149
Gupta Inscriptions 122, 123, 187
Guptas 39

PAGE

H

HALHED—trn. of the Sanskrit digest of Vyavahāra, Gentoo Code 8; 71, 72
Haradatta 18, 173
Hāralatā 211
Harinātha 129
Haris'candra—King 170
Harisimhadeva 211
Hārita 16, 165, 184, 188
Harṣacarita 106, 183, 212
Harṣavardhana 187, 188
Hastings, Warren 8, 88
Heliodorus—the Greek envoy 39, 115; the Vaisnava Greek 124
Hemacandra 5, 15, 56, 202
Hemādri 41, 56, 101, 115, 129, 181, 198, 199, 200
Henry VIII 52
Hindu Law in Its Sources 171
Hindu Law and Custom 75, 101
Hindu Positivism 85, 92
Hindu Political Theories 107
Hindu Polity 107, 147
Hindu University—Benares—specialising in Indian Culture 1
the vision of its founders 2-3
Maṇīndra foundation 5
Hirahadgalli plates 198
hiranya 119
Historical Introduction to Roman Law 168
History of Dharma-Sāstra Vol. I 70, 197, 203
History of Hindu Law 171
History of India 198 (see Banerji, R.D.)
History of India (Jayaswal) 144, 145, 147
History of Jahangir 203
History of Orissa 198

PAGE

History of the Pallavas of South India 143
Hopkins 175, 186
Hṛdayadhara, father of Lakṣmīdhara 57
Hultzsch, Dr. 141, 144
Huns, as worshippers of Viṣṇu 124, 125

I

Imperial History of India 183 (see Jayaswal)
Index Verborum to the Arthas'āstra 91
India, aspects of barbarian rule in 147-8
Indian Cameralism, Calcutta Readership Lectures on 68
Indian Philosophy 77, 126, 127-8
Indian Positivism 202
Indo-Aryan Literature and Cultural Origins 196
Inscriptions of As'oka 141
Isvara-candra S'āstri, Paṇḍit 201
Itihāsa—Arthas'āstra as part of 11; 62, 77, 157

J

JACOB, G.A. 110
Jagannātha 8, 10, 21
Jagannātha-Tarka pañcānana 71, 72, 88
Jahāngīr 41, 60, 130, 203
Jaimini 19
definition of Dharma 80;
sūtras of 125, 150, 215, 216
Jaiminīya-Nyayāmālāvistāra 118
Jains—abhorrence of 48; 77, 78
Jaisingh (of Amber) 60, 196, 197
J.A.S.B. 143

PAGE
Jaunpur (sultan of) 130
Java 49
Jayasimhakalapdruma 56, 197, 199
Jayaswal, Dr. K. P. 24, 39, 51, 57, 79, 84, 92, 107, 122, 132, 144, 145, 147, 149, 159, 161, 171, 175, 200, 212, 215
Jha, Dr. Ganganath 94, 116, 117, 153, 170, 188
Jīmūtavāhana 8, 9, 70, 72, 73, 112, 121
Jīvasiddhi 186
Jīvānanda 154
JBBRAS (1925) 129
Jolly 23, 101, 170, 171
Jones, Sir William 69, 88
Journal of the Benares Hindu University 183
JRAS, 1909 and 1910 124, 139
Jyotiṣaprakāśa 95
Jyautiṣa Saukhya 95

K

KADAMBAS 39, 45, 144, 198
Kādambarī 186, 188
Kālanirṇaya 10, 73
Kalanos 187
Kālaviveka 10, 70, 73
Kali 46
removing the taint of 148
Kālidāsa 45
on Manu's ideal 146
idealised gāndharva unions 187
Kālikāpurāṇa—on adoption 31, 98, 170
Kaliṅgā 160
Kalivarjya 38, 39, 55, 151, 176, 181, 183
paper by P. V. Kane on 181; 184, 185

PAGE
Kaliyuga 38, 163, 166, 177, 181, 182, 183, 191, 207
Kalpasūtra and Vedic study 17, 20, 84
Kāma 29
Kāmadhenu 41
(see Gopala)
Kāmbhojas 142
Kamalākara 21, 52, 101, 112, 113, 130, 180, 188
Kāmandaka 5, 14;
on Rājamaṇḍala 14; 15, 16
omissions of, explained 17; 56, 58, 62, 147, 185;
his *Nītisara* 85; 202, 204
Kāmeśa 212, 215
Kane, P. V. 70, 81, 86, 88, 96, 98, 101, 125, 129, 150, 154, 169, 178, 180, 182, 188, 190, 191, 197, 199, 200, 203, 204, 205, 207
Kaṇṭakaśodhana 78, 79
Kāpilas 159
Karka 18, 87
Karma 25, 34
Karmacaṇḍāla 126
Kārtavīrya 34, 105
Kārtikeya 185
Kāśī 22, 42
Kātyāyana 16, 18, 19, 40
on fallen women 53; 78, 83, 121, 133, 154, 155, 169, 176, 178, 180, 191, 205, 206
Kātyāyana-Srauta-Sūtra 119
Kauṭilya 5
on brahman immunities 11; 12, 14, 15, 16, 19, 36
on *nyāya* 38; 43
on the care of destitute women 50;
divorce permited to non-brahman 52; 62, 75, 78, 83, 84, 85, 101, 112

PAGE

Kauṭilya
on the authority of Nyāya 113-114; 122, 132, 133, 134, 139, 141, 143, 149, 158, 171, 174, 176, 179, 181, 185, 186, 187, 190, 192, 201, 202
(see also Visṇugupta)
of Brāhmaṇa as a soldier 212
Kauṭilīya 6, 63;
use of the Kauṭilīya in modern politics 68;
Bhaṭṭasvāmin on 84; 86, 92, 102, 112, 114, 185, 201
Keith, A. B. 125
Kharag Singh (Mahārāja) 189
Kharavela of Kalinga 197
King—knowledge of Dharma essential to 35;
and as duty 108-109
unhappiness a sign of error in governing 35
no legal power for independent legislation 43-45
to make good stolen property 44, 209
union of interest with subjects 101
Divine creation of 102
as the maker of the age 102-104
his power to make law repudiated 131-2
alleged power to make laws 132-4, 135;
is under and not above law 134-5
Royal pardon 137-8
qualification of a 208
primogeniture 209
duties of a conqueror 210
propitiation of unseen powers by 211
de facto King recognised 213

PAGE

Kisen Singh 189
kṛcchra 38, 119
Krishna Rao, M. V. 145
Krishnaswami Aiyar, T. 72, 180
Krishnaswami Row. K. Dewan Bahadur—the foundation 1
his career 3, 4
Kṛṣṇamṛga 48
Kṛṣṇa Yādava 198
Kṛtyakalpataru—its various parts 27-28; 41, 57, 70
its missing parts discovered 95; 96, 100, 129, 143, 148, 152, 155, 200, 203, 210, 211
Kṛtya-ratnākara 204
Kullūka 72, 78, 120, 129, 153, 157, 171, 213
Kulottunga I 58
Kumārapāla 15, 202
Kumārila 19, 30, 40, 112, 125, 126, 127, 177
Kumbhi—Plates of Vijayasimha 143
Kunti 184
Kuśa 48
Kūṭa-yuddha 59, 204, 208

L

Laghu-arhan-nīti 202
Lakṣana 26
Lakṣaṇaprakāśa 95
Laksmaṇasena 211
Lakṣmīdhara 8, 15, 27, 29, 41 57, 58, 60, 61;
content of the *Kalpataru* 62-4; 70, 101, 129, 148, 155, 200, 203, 204, 205, 210, 211, 213
(see also *Kṛtyakalpataru*)
Lakṣmīdhara and the Kṛtyakalpataru 95, 129, 203, 204

PAGE

Law of Nature—*cf.* with Dharma 37
Law—municipal, constitutional and secular 24
public and private 23, 92
conflict of usage and rule 32
customary—classification and systematisation of 38, 114
differentiation of secular and religious 78-79
vedic basis of Hindu Law 80-81
conflict of law not real 82-83
adjustment to changing society 109-110
repudiation of king's power to make law 131-2
alleged power to make law 132-5
king not above but under law 134
alleged change of law by As'oka and the Mauryas 135-6
increasing dependence on customary law 148-150
Law and Custom 170
Legal Remembrancer 100
Lobha-vija 140-141
Lokāyata 12, 148, 159
MAC Cunn 214

M

MACNAGHTEN, Sir Francis 72
Macnaughten Sir William Hay 9, 72
Macphail Dr. J. M. 140
Madanapāla 130
Madanapārijāta 129, 181
Madanaratna-pradīpa 200
Madanaratna 130
Madanasimha 41, 130

PAGE

Mādhava 8, 42, 74, 88, 112, 198, 199
Mādhavācārya author of *Kāla-nirṇaya* 10; 19, 73-4, 52, 53;
his treatment of Vyavahāra and Rājadharma 87; 118 151, 176, 177, 181, 185, 189 (see also Mādhava)
Mādhava Kongaṇi Varma 145
Madras Epigraphist's Report 145
Madras Law Journal Golden Jubilee Volume 95, 203
Madras University 1
founding of the chair of Indian History 2
Magas 142
Mahābalipuram 144
Mahābhārata 24, 48, 80
Anusas'āna-parva 107; 209, 212, 214
Rājadharma parva 101
S'ānti-parva 102, 104, 105, 107, 135, 146, 164, 174, 175, 181, 182, 184, 186, 190
Yakṣapras'na 93
Mahābhāṣya 18
Mahādeva, patron of Hemādri 129, 198, 199
Mahājana 24
Mahārāja of Baroda 67
Mahendra 77
Mahendravarman 144
Māhiṣmatī 105
Maithila 112
Maine, Sir Henry 21
on Indian Dharmas'āstra 69, 74, 79, 89
allegation of priestly influence on Hindu Law 90, 92, 110, 168
Majumdar R. C. 145
Mānasollāsa 56, 62, 154, 201, 202

PAGE
Maṇḍala, theory of 60, 63
Mandalik V. N.—his translation of *Yājñavalkya Smṛti* 88, 195; 101
Māṇḍavya 154
Māṅgaḍur grant 144
Maṇīndracandra Nandi, Maharaja of Cossimbazaar 67
Maṇīndra Foundation (see—Hindu University-Benares)
Maṅkaliputta, Gosāla 77
Mañjus'rī-mūlakalpa 183
Manu—usages of heretical associations as valid 12; 14, 16;
Asahāya on Manu 18; 30
condemns use of Nyāya 38; 45, 69, 83, 84, 93, 98, 99
on the authority of Nyāya 113-114; 126, 132, 136, 137, 139, 142, 145, 149, 150, 151, 152, 153
on the usage of a good s'ūdra 155-6; 157, 158, 158, 159, 162, 165, 169, 170, 171, 172, 173, 175, 177, 181, 182, 183, 184, 186, 191, 193, 195, 206, 207, 209, 212
Manu and Yājñavalkya 79, 92, 99, 122, 132, 149, 159, 161, 171, 175, 212
Manu Coḷa 145
Manusmṛti 14, 18, 39, 69, 70, 72, 75, 77, 78, 79, 80, 81, 115, 120, 122, 123, 131, 134, 136, 160, 161, 172, 174, 178, 186, 187, 205, 212
Mārasimha 145
Maritime activity—Indian 49
Marriage—conferred equality to women 49
reduction of the number of forms of 50

PAGE
Marriage
indissolubility of 51, 175-176;
cancellation of divorce etc. 51
divorce permitted to Non-brahman by Kauṭilya 52
reduction in the number of valid marriages 169-170
right of unmarried daughter to expenses of marriage 173-4
marriage an obligation to woman 174-5
gṛhasthās'rama 177
„ praised 177
hypergamous unions prohibited 185
Maskarin 18, 87
bhāṣya of 156
Mātṛviṣṇu 124, 125
Matsyapurāṇa 147, 182
Mauryan Polity 79, 140
Mauryas 44, 45
Mauryas-as changing the law of theft 135-6
Max Mueller 20, 88, 89
Mayūkhas 41
(see Nilakaṇṭha)
Mayūkha, Vyavahāra 9
Mayūra Sarma 144, 198
Medhātithi 18, 30
on valid smṛtis 38; 40, 43
explains the vedic sanction to *sahamaraṇa* as analagous to that of black magic 52; 78, 80, 84, 111, 115, 116, 117, 120, 131,
repudiation of king's power to make law 131-132; 153
on the practice of good men 155; 157, 183, 187, 206, 207
Meyer J. J. 23, 91, 92
Mimāmsā—rules of interpretation, systematisation of 13; 21, 24, 30, 40, 43

PAGE

Mimāṃsā
accepts as authority the practice of a good sūdra 48
interpretation of 82
application of rules of interpretation to Dharmas'āstra and Arthas'āstra 84
Colebrooke's study of 21, 89-90; 95
hypotheses of 96
effects of its spread on Buddhism 125-127; 134, 151, 157
rules of interpretation as applied to Hindu Law texts 150
Mimāṃsā-sūtra 125, 126
Miscellaneous Essays 90
Mitākṣarā 9, 41, 72, 88, 120, 121, 129, 133, 152, 157, 195, 203, 204, 206
Mithila 42
Mitra Mis'ra 26, 41, 48, 56, 58, 59, 99, 112, 150, 156, 158, 164, 165, 200
see also *Vīramitrodaya* 203, 208, 209, 210
mleccha 46, 54
(see Yavana, Vrātya)
Mokṣa 29
Mookerji, Asutosh 121, 140
Mṛges'avarma 144
Mudrārākṣasa 186
Muktyār 121
Muirhead J. 168

N

NĀBHĀKAS 142
Nāgoji Bhaṭṭa 196
nāmātides'a 118
Nāmdev 168
Nāna Fadnavis 199
Nānāghat inscription 165, 198

PAGE

Naṅdas 185
Nannarāja 143
Nanda Paṇḍita 38, 84, 130, 193
Nārada—the divine sage 108
Nārada 17, 20, 40, 78, 83, 98, 114, 132, 133, 169, 171, 176, 180, 184, 190, 191
Nārada-paris'iṣṭa 191
Nāradasmṛti—as example of civil law 16; 20, 70
conflicts of law not real 82
Nāradīyamanu-samhitā 181
Nāradīyapurāṇa 182
Narasimha-varman 144
Nārāyaṇa Bhaṭṭa 130
Nārāyaṇa 88
Nāsik 22, 42
Natural Science (see Lākṣaṇa)
Nātyadarpaṇa 183
Nāyanikā—queen 165, 198
Nelson J.H. 89
Netaji Palkar 55
nibandhas 20, 24
as the fashion of each court 41, 42, 56, 84
by kings 199, 200
Nilakaṇṭha 31, 58, 59, 98, 113, 130, 150, 188, 200
see Mayūkhas—*Rājanīti mayūkha* 202, 205, 206, 207, 208
Nilakaṇṭha S'āstri 146, 198
Nirukta 182
Nirvāṇa 25
Niti literature 56
Niti-kalpataru 210
Nitimārga 145
Nītimayūkha 200, 204-205, 207,208
Nītisāra 14, 84, 85, 145, 146, 202, 204
(see also Kāmandaka)
Nitis'āstra 93
Nītivākyāmṛta 15, 202

PAGE

Niyoga 38, 52, 112, 150
gradual disappearance of 184
Niyogakṛt 121
Nṛsimhaprasāda 130
Nyāya (logic) 24, 38, 95
authority of Kauṭilya and Manu on 113-114; 133, 151
Nyāyakos'a 119

O

Oriental Conference—Eighth 182
Orissa 48

P

Padmapūrāṇā—Uttarakhaṇḍa 128
Paindas 142
Paithan 22, 42
Paithinasi 48, 160, 167, 188
Pallava 39, 45, 198
Paṇas 139
Paṇḍita 42, 143
Pāṇḍyas 142
Pāṇini 19
Paramāras of Mālva 40
Parās'ara 53, 73, 74, 83, 151, 161, 163, 164, 166, 198
Parās'ara-mādhavīya 164
Parās'arasmṛti 16
commentary by Mādhava on 42; 70, 72. 73, 176, 177, 181, 185, 189, 193
Pāraskara 87
Paras'urāma, killed Kārtaviyārjuna 106
paripālanam 45
Parisad 32, 39. 42, 99-100
under Rāma 108
substitutes for in *dharmavyavasthā* 131
Pārthasārathi Mis'ra 112
Partition-*uddhāra vibhāga* 182-3
Pāsaṇḍas 12, 78, 159
Pās'upatas 159
pātaka 75

PAGE

Pātaliputra 138
patria potestas 50, 170
peculium castrense 168
Peddibhaṭṭa 129
Pitṛdayitā 211
Political Philosophy of Burke, 214
Pollux 199
Pollock 69, 74, 109, 168
Position of Women in Hindu Civilisation 165, 169, 171
Pracchanna 80
Pracetas 116
Prādvivāka 57, 143
Prajāpati 153
Pratāparudradeva—of Orissa 99
Pratiloma, usages of castes 48
Pratinidhi 38, 118-121, 215-216
Pratiṣṭhasāgara 199
Pravarasena II 122, 198
Prāyascitta 11, 16, 23, 38
of mlecchas 112, 194 195, 200
Prayogaratna 130
Present Administration of Hindu Law 72
Princes, education of 148
Private law 23
Privy Council-Judicial committee of 9
Property, alienation by widow for pious purposes 51-52, 178, 180
Ptolemy 142
Public law 23
Pulakes'in I 198
Punishment-mixture of spiritual and secular 74-75
Punjab 48
Puṇya 25
Purāṇas, thrown open to women and sudras-as fifth and sixth categories of the vedas 11; 26, 30, 31, 39, 62, 95, 157, 181, 182

PAGE

Purification, reduction of the rules of 166-167
Purodhā 42
Purohita 142 see also *purodhā*
Puṣyabhūti 186
Puṣyamitra 39, 106, 197, 188, 212
Put 170

R

RĀDHAKRISHNAN, Sir S. 77, 126, 127-8
Rāghavan, Dr. V. 183
Raghunandana, 8, *tattvas* of 70 ; 130
Raghuvams'a 85, 105, 146
Rājadharma 4
called Rajanīti 7
Dharmas'āstra as Rājadharma 32 ; 55, 57, 58, 62, 65
scope of 68 ; 70, 74, 140, 200
works by court Paṇḍits as 203-204
Rājadharma-Kalpataru 62-4, 142, 200, 205, 210, 211,
Rājadharma-Kāmadhenu 200
Rājadharma-Kaustubha of Anantadeva 57, 59, 200, 203, 208
Rājadharma-Prakās'a 57, 200, 208
Rājādhirāja 198
Rājamahendra-Rājakesari 145
Rājanīti—preference given to heretics etc., in an audience with the king 12
subjects for the study of a prince 12 ; 24, 56, 70 ;
differences with Dharma s'āstra and Arthas'āstra 92-93 ; 200
Rājanīti of Bhoja 200

PAGE

Rājanīti-mayūkha—of Nilakaṇṭha 57, 58
Rajanīti-ratnākara 57, 108, 200, 204, 210, 213, 215
Rājas'āsana 43, 132, 133
Rājasūya 166, 196, 197
Rājendra II 146
Rājataraṅgiṇī 188
Rājya S'ri 187
Rākṣasa 50
Rāma—an ideal ruler 34
as the restorer of the Golden Age 106
Ramachandra Dikshitar, V. R. 79, 140
Rāmānuja 18, 127
Rāmarājya 105
Rāmāyaṇa 105, 108, 109, 146, 165
Raṇbīr Singh—Maharaja of Kashmir and Jammu 88
Rangaswami 114, 115, 116, 120, 121, 142, 171
Ranjit Singh, Maharaja 71, 189
Rapson 86, 115, 124
Rāṣṭrakūṭas and their Times 143
Ratnākara 200
(see Caṇḍesvara)
Real-politik 24
Reflections on the French Revolution 213-214
Religions of India 175
Representation, Doctrine of 118, 121
Ṛgveda 182
Rhys Davids Dr.-T.W. 86
Rome 169
Roman law 50
Rock Edict XIII 141
Royal pardon (see king)
Ṛtam 25
Rudradāman 106
Rudrasena I 123

PAGE

S

S'ABARA 19, 21, 30, 84, 90, 111, 112, 177
Sabhya 91, 98, 99
Sachau, E. 193
Sādharaṇa Dharma 43
Sahamaraṇa 52
  instances of 53, 112
  (see Sati)
Saints—Vaiṣṇava and S'aiva 50
Samana—mahāmātas 143
Samarāṅgaṇa-sūtra 201
Samayācara 151
Sambhaji 197
S'aṁbhūka 108
  raised to Heaven 109
Samiti 99
Saṁkalpa 47
Saṁnyāsa—by non-brahmins 37, 51
Saṁsāra 25, 34
Saṁgraha 84
Saṁskāra 11, 31, 49, 200
Saṁskāraprakāṣa 165
Sāṁkhya 12, 148
Saṁsthā 113
Samudragupta 39, 85
  relation to an outcaste clan 123, 198
Sandal, M. N. 216
Sane K. N. 197
Sangha-Buddhist 12, 17
S'aṅkara 18, 40, 77
  Influence in the disappearance of Buddhism 127, 128
S'aṅkarabhaṭṭa 21, 130
S'aṅkararāma S'āstri 79, 84, 110, 150, 151
S'aṅkarārya commentary on Kāmandaka's *Nītisāra* 84, 85
  commentary on *Harṣacarita* 183

PAGE

S'aṅkha-Likhita 16, 48, 100, 142, 160
Saptāṅga 197
Sarabhoji, Maharaja 88
Sarasvatī-vilāsa 199
Sarkar B. K. 23, 24, 85, 92, 93, 104, 202, 204, 205
Sarkar, K. L. 150
Sarvajña—Nārāyaṇa 155
Sarvoru S'ārman Trivedi 72, 88
S'atakarṇi I 165, 198
S'ātakarnis 39
S'atapatha-Brāhmaṇa 120, 139, 190
S'ātātapa 176
S'ātavāhanas 14
Satī (see *Sahamaraṇa*) 52, 186-9
Satraps—of the Dakhan 45
Ṣaṭtrimsanmata 127, 152, 159
S'aunaka 76
S'aurya-dhanam 169
Scientific Study of Hindu Law (Nelson) 89
Scythian 39
Shadilal, the Hon'ble Sir 9
Shama Sastri R, Mahamahopadhyāya 76, 91, 192
Srigondekar, G. K. 202
Simhavarman 144, 182
Sindh 48
S'iṣṭācāra 47, 151
  supersession by *sādhū-nāmācāra* 156-8
Sītā 165
S'ivā-cchatrapatice caritra 197
S'ivāji 55, 59
  his expiation and coronation 195-196; 197, 199
S'ivaskandavarman 143, 198
Skandapurāṇa 119
Smith, V. A., 77, 137, 139, 140, 198, 203
Smṛti 14, 15, 16, 17, 23, 28, 30, 31

PAGE

Smṛti
limitless in extent 31
dṛṣṭārtha and *adṛṣṭārtha* 37, 97
authority of a *smṛti* depends on its merits 38, 116 ; 39, 40, 46, 50, 62, 74, 75, 82
lost *smṛtis* 41
distance between *smṛtis* and commentaries on them 87, 91
represent literature of magic 92 ; 112
smṛtis endless and recognition of a modern *smṛti* 116-118 ; 151, 207
Smṛticandrikā 28, 51, 96, 153, 157, 173, 180, 187, 200, 207
Smṛtikaustubha 130
Smṛtimuktā-phala 28, 96 (see also Vaidyanātha Dīkṣita)
Smṛtīnām Samuccaya 192
Smṛtisāra 129
Smṛtisārasaṃgraha 40
Smṛtisāra-samuccaya 88
Smṛtiviveka 40
Smṛtyantara 31
Somadeva 5, 15, 17, 56, 102, 202
Some Aspects of Ancient Indian Culture 196
Somes'vara 5, 56, 154, 201
S'rāddha 200
S'rauta 20
S'reni 149
S'rīdatta 129
Srīkara 213
S'rikṛṣṇa, author of *Dāyakramasaṃgraha* 9
S'rotriya 29, 156
S'ruti 14, 62, 80, 112, 149
Steele 149

PAGE

Sthanes'vara 186
Strange Sir T. 9, 72
Strīdana 81, 178, 200
Subrahmanya Aiyar, Dr. S., Foundation 4
Subodhini 129
Sucet Singh 189
S'uddhi 11, 166
S'ūdra—usage of a good S'ūdra 48, 155-6 ;
animus against the learned 48, 158-159 ;
condemnation of mendicancy and celibacy of a 122
relaxation of duties to 164
S'ūdraka 187
S'ūdrakamalākara 180
S'ukra 6, 82, 133
S'ukranīti 42, 56, 76, 79, 102, 104, 107, 131, 143
S'ūlapāṇi 130, 158
S'unas's'epa 170
S'uṅgas 14, 39
Sutherland, J.C. 72
S'ūtra—style and purpose 17, 18, 19
Suttas (Buddhist) 17

T

TAGORE Law Professorship 72, 73
Takṣas'ilā 124
Taittirīya-Brāhmaṇa 174
taṇḍula 119
Tarkālaṅkāra, S'rī Kṛṣṇa 72
Tagore P. C. 72
Taxes, as king's wages 35, 107
tīrtha 48, 201
Tod 189
Toḍarānanda 95, 154
Toḍar Mal 26, 130
see also *Dharma Saukhya*

PAGE
Toramaṇa 125
Tripiṭaka 17, 86
Triratna—Buddhist 25
Tristhalīsetu 130
Tukārām 168
Tupper, Sir C.L., 149
tyāga 75

U

Ucchiṣṭa Gaṇapati 168
Udayendiram grant 199
Uddālakavrata 195, 196
University of Bombay, see Bombay University
University of Calcutta, see Calcutta University
University of Madras, see Madras University
Upanayana 31
non-investiture a privilege 49
for Vrātyas 54
for women 165-166; 174, 195, 196
Upapurāṇa 31
Us'anas 82
Utsanna 80
Uttānūr plates 145

V

Vacanātides'a 118
Vācaspati Mis'ra 41, 72, 130
Vācaspatya 118
Vākāṭakas 14, 39, 198
Vakīl 121
Vais'ampāyana 5
Vaiṣṇavism and S'aivism 168
Vaivasvata Manu 145
Vājasaneyi-Brāhmaṇa 120
Vajracchedikā 158
Vāman S'āstri Islampūrkar 181
Vaṅga 160
Varadarāja 72, 88, 121

PAGE
Varāhamihira 58, 85, 204
Vardhamāna 130
Varṇas—readmission into 37
Varṇās'rama-dharma 48
Vārtā 148
vārtika 18
Vasiṣka 39, 198
Vasiṣṭha 16, 18, 52, 53, 54, 86, 126, 149, 156, 157, 160, 169, 170, 174, 178, 184, 190, 191, 192, 196, 207
Vāstu S'āstra 201
Vāsudeva 124
Vātsyāyana 187
Veda—the bed-rock of Hindu religion 30; *smṛti* must agree with 30; self-evident and authoritative 94-95
Vedāṅgas 95
Vedānta Des'ika 106
Vedānta-sūtras 77
Vedic Bases of Hindu Law by P. V. Kane 81
vidhi 80, 81
Vidyādhanam 169
View of Hindu Law (Nelson) 89
Vijayanagara 42, 189
Vijayasimha 143
Vijñānabhikṣu 128
Vijñānes'vara 8, 15, 26, 53, 57, 78, 83, 84, 95, 112, 129, 150, 152, 157, 192, 194, 203, 206, 207
Vijñānes'vara and Lakṣmīdhara 95, 129
Vikalpa 43, 47, 81-82
Vikramāditya VI 58, 202
Village Communities 89
Vinaya-sthiti-sthāpaka 100, 143
Vīramitrodaya 26, 28, 95, 97, 99, 115, 150, 152, 154, 160, 161, 173, 191, 206
Vis'ākhadatta 183

PAGE

Viṣṇu as both king and subject 35, 108
Viṣṇu 16, 18 20, 178
commends *Sati* 52; 115
Viṣṇugopavarman 144
Visṇugupta 19, 85
Viṣṇupurāna 46, 76, 95, 106, 127, 158, 159
Viṣṇu-smṛti 70, 75, 138, 139, 153, 184, 187
Vis'varūpa 18, 40, 80, 84, 153, 158
Vis'ves'varabhaṭṭa 41, 129, 196
see also Gāgā Bhaṭṭa
Vivādabhaṅgārṇava 88
Vivādacintāmaṇi 72
Vivadārṇavabhañjana 71
Vivādaratnākara 139
Vivadārṇavasetu 71, 72, 78
Vivādasārārṇava 72, 88
Voyages to prohibited areas • 162-163
Vrātyaprāyas'cittanirṇaya 196
Vrātya-prāyas'citta-Saṃgraha 196
Vrātyas 54
treatment of 195-196
a civilised community 54, 55
Vrātyastoma 54, 196-197
Vṛtti—of Katyayana 19
Vyāsa 16, 153, 169, 188, 191
Vyavahāra 7 8, 23, 68, 70, 74, 92, 113, 132, 133, 200
Vyavaharamātṛkā 10, 70, 73, 121
Vyavahāra mayūkha 51
translation by Borradaile 72
on adoption 98; 101, 169, 180, 191, 203, 204, 207
Vyavahāranirṇaya 72, 88, 121
Vyavahāradarpana 19
Vyavasthā 32
Vyutpattivāda 118

PAGE

W

WARREN HASTINGS, see Hastings, Warren
Weber, A, 5
Wife—has a claim to a moiety of husband's *puṇya* 51, 171
Bṛhaspati on the rights of a 172-173
Wilson, H. H., 9
Women—care of the destitute 50, 171;
work-houses for rehabilitation of fallen women 53
safeguards against offences against 53
abduction a grave crime 53
treatment of fallen women under Musalman rule 54
relaxation of duties for 164
upanyana for 165-166
status of (general) 171
wife's share in the merit (*puṇya*) of the husband 171
Bṛhaspati on the rights of a wife 172-173;
right of unmarried daughter to expenses of marriage 173-174;
marriage an obligation to 174-5
sex—equality—alleged Buddhist influence on 175
marriage indissoluble 175-6
treatment of outraged and abducted women 189-192;
on independent right to perform sacrifice 216
Wynch, P. M. 72

Y

YĀDAVAS of Devagiri 40
Yajña 38, 174

PAGE

Yajñasvāmin's commentary on Vasiṣṭha 18, 86

Yājñvalkya—recognises customs of heretics 12, 78; non-inclusion of *Yājña-valkya-smṛti* in the S.B.E. series 88-89; 16, 18, 19, 20, 30, 40, 41, 70, 76, 79, 80, 81, 82, 83, 84, 93 95, 98, 113, 132, 133, 150, 151, 152, 153, 155, 158, 161, 162, 167, 169, 171, 173, 174, 184, 190, 192, 195, 198, 206

Yama 16, 116, 165, 174, 176, 180, 195

Yama and Yami 182

Yāmunācārya 127

Yas'obhita Madhyamarāja 198

Yavana—see Vrātya, *mleccha*

Yavanas 142

Yoga 12, 148

Yuga 38, 163, 182

Yugadharma 38, 49; relaxation of 163, 164

Yukti 47, 153-4

Yuktikalpataru of Bhoja 56, 201

Z

Z.D.M.G. 84

PUBLICATIONS OF THE ADYAR LIBRARY

(The Theosophical Society, Adyar, Madras, S. India)

		Rs.	A.
1.	A PRELIMINARY LIST OF THE SAMSKṚT AND PRĀKṚT MSS. in the Adyar Library. (Samskṛt-Devanāgarī) 1910 Boards ...	1	8
	Cloth ...	2	0
2.	A DESCRIPTIVE CATALOGUE OF THE SAMSKṚT MSS. in the Adyar Library. By F. O. Schrader, Ph.D., Vol. I, Upaniṣads 1912. Cloth ...	5	0
3.	THE MINOR UPANIṢADS (Samskṛt) critically edited for the Adyar Library. By F. O. Schrader, Ph.D., Vol. I.—Samnyāsa 1912. Cloth ...	10	0
4.	AHIRBUDHNYA-SAMHITĀ OF THE PĀÑCARĀTRA ĀGAMA (Samskṛt), Edited under the supervision of F. O. Schrader, Ph.D., 2 Vols. 1916 Cloth ...	10	0
5.	INTRODUCTION (English) TO THE PĀÑCARĀTRA AND THE AHIRBUDHNYA SAMHITĀ. By F O. Schrader, Ph.D. 1916. Cloth ...	3	0
6.	YOGA UPANIṢADS—20—with the Commentary of S'rī Upaniṣad Brahma Yogin Edited by Pandit A. Mahadeva Sastri, B.A. 1920 ...	5	0
7.	SĀMĀNYA VEDĀNTA UPANIṢADS—24-with the commentary of S'rī Upaniṣad Brahma Yogin. Edited by A. Mahadeva Sastri, B.A. 1921 ...	5	0
8.	VAIṢṆAVA UPANIṢADS—14—with the Commentary of S'rī Upaniṣad Brahma Yogin Edited by A. Mahadeva Sastri, B.A. 1923...	4	0
9.	S'AIVA UPANIṢADS—15—with the Commentary of S'rī Upaniṣad Brahma Yogin. Edited by A. Mahadeva Sastri, B.A. 1925 ...	3	0
10.	S'ĀKTA UPANIṢADS—8—with the Commentary of S'rī Upaniṣad Brahma Yogin. Edited by Pandit A. Mahadeva Sastri, B.A. 1925 ...	2	8
11.	CATALOGUE OF SAMSKṚT MSS. in the Adyar Library (revised). Edited by the Pandits of the Adyar Library under the direction of Prof. C. Kunhan Raja, M.A., D. Phil. (Oxon) 2 Vols. 1926 and 1928 Each ...	3	12
12.	SAMNYĀSA UPANIṢADS—17—with the Commentary of S'rī Upaniṣad Brahmayogin Edited by T. R. Chintamani, M.A., and the Pandits of the Adyar Library, under the direction of Prof. C Kunhan Raja, M.A., D. Phil. (Oxon.) 1929 ...	4	0
13.	RUKMINĪ KALYĀṆA MAHĀ KĀVYA by Rājacūdāmaṇi Dīkṣita. Edited by the Pandits of the Adyar Library and Mr. T. R. Chintamani, M.A., under the direction of Prof. C. Kunhan Raja, M.A., D. Phil. (Oxon.) 1929 ...	2	0
14.	UNPUBLISHED MINOR UPANIṢADS with the Commentary of S'rī Upaniṣad Brahma Yogin. Edited by the Pandits of the Adyar Library, under the direction of Prof. C. Kunhan Raja, M.A., D. Phil. (Oxon.) 1933 ...	5	0
15.	TEN MAJOR UPANIṢADS with the Commentary of S'rī Upaniṣad Brahma Yogin, Edited by the Pandits of the Adyar Library		

	Rs.	A.
under the direction of Prof. C. Kunhan Raja, M.A., D. Phil. (Oxon.)		
Is'a to Aitareya Vol. I —1935 ...	4	8
Chāndogya and Bṛhadāraṇyaka Vol. II —1936 ..	6	0
Vol. I Boards } Vol. II ,, } ...	5	8
16. MELARĀGAMĀLIKĀ of Mahāvaidyanātha S'ivan. Edited by Pandit S. Subrahmanya Sastri, F.T.S. 1937 ...	2	0
17. SANGRAHACŪḌĀMAṆI—Edited by Pandit S. Subrahmanya Sastri, F.T.S. with a critical Introduction in English by T. R. Srinivasa Aiyangar, B.A., L.T. 1938 ...	5	0
18. PRATYABHIJÑĀHṚDAYAM (The Secret of Recognition) with English Translation and Notes by Dr. K. F. Leidecker, M.A., Ph.D.,; Text edited by the Staff of the Adyar Library under the direction of Dr. G. Srinivasa Murti, B.A., B.L., M.B.C.M., Vaidyaratna, Hon. Director, Adyar Library. 1938 ...	3	0
19. BHAVASAMKRĀNTI-SŪTRA AND NĀGĀRJUNA'S BHAVASAMKRĀNTI S'ĀSTRA—with the Commentary of Maitreyinātha—with English Translation by Pandit N. Aiyaswami Sastri, Professor, S. V. S. College, Tirupati. 1938 ...	2	4
20. YOGA UPANIṢADS. Translated into English by T. R. Srinivasa Aiyangar, B.A., L.T., and Pandit S. Subrahmanya Sastri, F.T.S. 1938	5	0
21. * WHERE THEOSOPHY AND SCIENCE MEET (in four Parts) by a body of experts—Edited by Professor D. D. Kanga, M.A., I.E.S. (Retd.)		
Part 1. Nature—From Macrocosm to Microcosm ...	1	14
Part 2. Man—From Atom to Man ...	1	14
Part 3. God—From Humanity to Divinity ...	2	4
Part 4. Some Practical Applications 1938 ..	2	4
22. ṚGVEDAVYĀKHYĀ, MĀDHAVAKṚTĀ—Edited by Dr. C. Kunhan Raja, M.A., D. Phil. (Oxon.) 1939 ...	6	0
23. THE NUMBER OF RASAS. By V. Raghavan, M.A., Ph. D., Department of Sanskrit, University of Madras, with a Foreword by Prof. M. Hiriyanna, M.A., formerly Professor of Samskṛt Maharajah's College, Mysore, 1940 ...	3	0
24. SĀMĀNYA VEDĀNTA UPANIṢADS—Translated into English by T. R. Srinivasa Aiyangar, B.A., L.T., and Pandit S. Subrahmanya Sastri, F.T.S., 1941 ...	5	0
25. BHAGAVADGĪTĀRTHAPRAKĀS'IKĀ of Upaniṣad Brahmayogin (Samskṛt). Edited by the Pandits of the Adyar Library with an Introduction by Dr. C. Kunhan Raja, M.A., D.Phil. (Oxon.), 1941 ...	4	0
26. SAMAVEDA-SAMHITĀ—With the Commentaries of Mādhava and Bharatasvāmin. Edited by Dr. C. Kunhan Raja, M.A., D. Phil. (Oxon.), 1941 ...		
27. RĀJA DHARMA (Dewan Bahadur K. Krishnaswami Rao Lectures, 1938, University of Madras) by Rao Bahadur K. V. Rangaswami Aiyangar, M.A., 1941 ...		
28. VARIVASYĀRAHASYAM of Bhāsurānandanātha (2nd Edition) by Pandit S. Subramanya Sastri, F.T.S. (with English Translation), 1941 ...		

* *Published under the auspices of the Adyar Library Association.*

Rs. A.

29. VYAVAHĀRANIRṆAYA OF VARADARĀJA—Edited by Rao Bahadur K. V. Rangaswami Aiyangar, M.A., and A. N. Krishna Aiyangar, M.A., L.T., Jt. Editor, *Brahmavidyā*, Adyar Library, 1941 ...

30. SANGĪTARATNĀKARA—With the Commentaries of Catura Kallinātha and Simhabhūpāla. Edited by Pandit S. Subrahmanya Sastri, F.T.S., Vol. I, 1941 ...

PAMPHLETS

A VARIANT VERSION OF THE EKĀGNIKĀṆḌA (Reprinted from the Adyar Library Bulletin, October, 1939). Edited by K. Madhava Krishna Sarma, M.O.L. ... 0 3

THE RĀJAMṚGĀṄKA OF BHOJA (Reprinted from the Adyar Library Bulletin, October, 1940). Edited by K. Madhava Krishna Sarma, M.O.L. ... 0 4

IN THE PRESS

1. AS'VALAYANAGṚHYA-SŪTRA—With Devasvāmi Bhāṣya—Edited by Swami Ravi Tirtha.
2. ĀSVALAYANAGṚHYA-SŪTRA (Bhāṣya of Devasvāmi). Translated into English by A. N. Krishna Aiyangar, M.A., L.T., Jt. Editor, *Brahmavidyā*, Adyar Library.
3. JIVĀNANDANAM OF ĀNANDARĀYAMAKHI with a Commentary by Vaidyaratna M. Duraiswami Aiyangar. Edited by Vaidyaratna G. Srinivasa Murti, B.A., B.L., M.B. & C. M. and Vaidyaratna Pandit M. Duraiswami Aiyangar.
4. S'RI PAÑCARĀTRA RAKṢĀ of S'ri Vedānta Des'ika—Edited by Vaidyaratna M Duraiswami Aiyangar and Vedānta S'iromaṇi T. Venugopalacharya.
5. ĀLAMBANAPARĪKṢĀ AND VṚTTI by Dinnāga. With the Commentary of Dharmapāla. Edited by Pandit N. Aiyaswami Sastri.
6. VAIṢṆAVA UPANIṢADS—Translated into English by T. R. Srinivasa Aiyangar B.A., L.T. and Pandit S. Subrahmanya Sastri, F.T.S.
7. A DESCRIPTIVE CATALOGUE of the Manuscripts in the Adyar Library by K. Madhava Krishna Sarma, M.O.L., under the direction of Prof. C. Kunhan Raja, M.A., D. Phil. (Oxon.)—Vedic.
8. USĀṆIRUDDHO of Rāma Pāṇivāda. Edited by Pandit S. Subrahmanya Sastri, F.T.S. and Dr. C. Kunhan Raja, M.A., D. Phil. (Oxon.).
9. SOME CONCEPTS IN ALAṄKĀRA S'ĀSTRA by Dr. V. Raghavan M.A., Ph. D.
10. NYĀYAKUSUMĀÑJALI of Udayanācārya—Translated into English by Swami Ravi Tirtha.
11. THE ĀPASTAMBASMṚTI—Edited by A. N. Krishna Aiyangar, M.A., L.T., Joint Editor, *Brahmavidyā*, Adyar Library.
12. THE ACYUTARĀYĀBHYUDAYAM of Rājanātha Diṇḍima—Sargas 7 to 12—by A. N. Krishna Aiyangar, M.A., L.T., Adyar Library.

Agents for our publications :

THE THEOSOPHICAL PUBLISHING HOUSE

Adyar, Madras, S. India

WORKS UNDER THE PREPARATION

1. CATURDAS'ALAKSANI OF GADĀDHARA with Five Commentaries—Edited by Pandit N. Santanam Aiyer.
2. GAUTMASMṚTI—Edited by A. N. Krishna Aiyangar, M.A., L.T., Joint Editor, *Brahmavidyā*, Adyar Library.
3. THE KĀLĀDARS'A OF ĀDITYA BHAṬṬA—Edited by Rao Bahadur K. V. Rangaswami Aiyangar, M.A., and A. N. Krishna Aiyangar, M.A., L.T., Joint Editor, *Brahmavidyā*, Adyar Library.
4. THE VIṢṆUSMṚTI—With the Kes'ava Vaijayanti of Nanda Paṇḍita Edited by Rao Bahadur K. V. Rangaswami Aiyangar, M.A., and A. N. Krishna Aiyangar, M.A., L.T., Adyar Library.

BRAHMAVIDYĀ

THE ADYAR LIBRARY BULLETIN

Editor: PROF. C. KUNHAN RAJA, M.A., D.PHIL. (OXON.)

Jt. Editor: A. N. KRISHNA AIYANGAR. M.A., L.T.

Rates of Subscription:

Life Subscription Rs. 100
or $ 50
or £ 10

	Per Annum	Single Copy
India & Ceylon	... Rs. 6	Rs. 2-8
U. S. A.	... $ 3	$. 1.25
British Empire	... Sh. 12	Sh. 5
Other Countries	... Rs. 9	Rs. 3-8

All Communications to be addressed to:

THE DIRECTOR,
Adyar Library,
Adyar, Madras, S. India.

V. P. A.